



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: January 3, 2007

REPORT NO.: 07-010

ATTENTION: Council President and City Council  
January 9, 2007

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for  
Navy Broadway Complex, Council District 2.

OWNER: United States Navy

APPLICANT: Manchester Financial Group

APPELLANTS: 1) Ian Trowbridge and the Broadway Complex Coalition  
2) Katheryn Rhodes and Conrad Hartsell, M.D.

REFERENCE: Development Services Department (DSD) Memo dated October 19, 2006, Centre City Development Corporation (CCDC) Report dated October 20, 2006, Navy Broadway Complex Project Environmental Impact Report/Environmental Impact Statement (Joint CEQA/ NEPA document) dated October 1990, certified in October 1992, Final master Environmental Impact Report for the Centre City Redevelopment Project certified in April 1992, Final Subsequent Environmental Impact Report to the 1992 Final Master Environmental Impact Report Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments, certified in October 1999, North Embarcadero Visionary Plan Environmental Impact Report, certified in March 2000, and Downtown Community Plan Environmental Impact Report in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, certified in February 2006.

REQUESTED ACTION:

Should the City Council deny the appeal thereby upholding the determination of DSD and CCDC that no additional environmental review is necessary for the proposed Navy Broadway Complex (NBC) project? The City Council certified an Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) for this project on October 20, 1992. The project is located within the Centre City/ Downtown Community Planning Area.

### STAFF RECOMMENDATION:

1. DENY the appeals;
2. UPHOLD Environmental Determination; and
3. Make an express finding that the information submitted by the appellants does not constitute substantial evidence of substantial changes in the project or the circumstances under which the project is undertaken, or new information of substantial importance concerning the project, that would suggest the project will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

### SUMMARY:

The only issue before the City Council is the appeal of the environmental evaluation summarized in a memorandum dated October 19, 2006 from DSD (Attachment 1) and subsequently adopted by CCDC on October 25, 2006. The NBC project itself is subject to a separate consistency determination process performed by CCDC, pursuant to a 1992 Development Agreement between the City of San Diego and the U. S. Navy. DSD was asked to conduct a CEQA evaluation on the proposed NBC project for CCDC pursuant to Section 21166 of CEQA, that compares the proposed project with the project described in the 1990 EIR/EIS that was certified by the City Council on October 20, 1992. The review was limited to consideration of CEQA issues associated with the project and previously certified applicable environmental documents. After consideration of the project and several applicable certified environmental documents for other projects in the vicinity of the NBC project, DSD concluded that the NBC project was adequately addressed in these prior environmental documents and that no additional environmental review was required.

### BACKGROUND:

In June 1987, the City and the Navy entered into a Memorandum of Understanding ("MOU") to set forth a process for the formulation of detailed plans and terms of development for the NBC, a site bounded by Broadway, Harbor Drive (to the west and south), and Pacific Highway. The NBC site is located within the Marina and Columbia Sub Areas of the Centre City Redevelopment Project Area. Federal legislation, specific to the development of this site, authorized the Navy to enter into a long-term lease with developer(s) for redevelopment of the site, provided that any property leased was developed according to the Central Bayfront Design Principles.

The Agreement was executed in 1992, and was entitled Agreement between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the NBC. The Agreement outlines specific uses, building size, height and design guidelines, as well as requirements to complete significant public improvements. The Agreement contemplates a maximum amount of development on the Site, including a maximum of 1,650,000 square feet of office space, 1,220,000 square feet

of hotel, 25,000 square feet of retail, 55,000 square feet of public-attraction space, parking to serve the development and 1.9 acres of open space at Broadway and Harbor Drive. According to the Agreement, if a developer lease contemplated in the Federal legislation was not signed by January 1, 2002, the Agreement would expire.

In late 2001, at the request of the Navy, and to prevent the entitlements from expiring, CCDC staff processed an Amendment to the Agreement to extend its deadline for one year. The extension was to allow time for consideration of alternative strategies to move the NBC project forward. The City Council approved the Amendment to the Agreement on December 3, 2001, which changed the expiration date from January 1, 2002 to January 1, 2003. Again in November 2002, the Navy and the City extended the expiration date from January 1, 2003 to January 1, 2007.

The 2001 and 2003 Amendments state that the purpose of such amendments is to keep the Agreement in full force and effect for a period of time deemed adequate to bring the Agreement into consistency with the North Embarcadero Visionary Visionary Plan. Accordingly, CCDC will also review the proposed Master Plan for consistency with the Visionary Plan. The NBC is a critical site within the North Embarcadero due to its size and location.

In 1997, CCDC, along with the City, the County of San Diego, the San Diego Unified Port District and the Navy, formed the North Embarcadero Alliance to draft, endorse and adopt a new plan for the waterfront area west of the railroad right-of-way and Laurel Street to the north, and Harbor Drive to the south. The resultant North Embarcadero Alliance Visionary Plan (Visionary Plan) has two main objectives: to install a variety of public improvements to beautify the area to encourage new development and to prescribe regulatory standards that contribute a unified development pattern to the waterfront.

The success of the implementation of the Visionary Plan is largely dependent on the full incorporation of the development scenario contemplated therein by the Alliance. Work on the Visionary Plan is currently in the schematic design phase. The North Embarcadero Alliance Visionary Plan and the NBC Agreement are similar in substance and intent, in part because the Visionary Plan is also based on the Central Bayfront Design Principles. As a result, the entitlements that make up the NBC Agreement are generally consistent with the vision for development in the area that is part of the Visionary Plan.

On March 31, 2006, the Navy selected Manchester Financial Group (Developer) as Developer for the NBC site. The Developer has prepared a package for submission to CCDC for the proposed Master Plan for the development of the entire Navy Broadway Complex and the phase one Basic Concept/Schematic Drawings for the proposed Navy Building. A summary of the proposed NBC project is provided in the Project Description section of this report.

## PROJECT DESCRIPTION:

For purposes of conducting the CEQA consistency analysis, DSD considered the proposed NBC project components. DSD found that the proposed NBC project is consistent with the project described in the 1990 EIR/EIS in terms of uses and intensity. The 1990 NBC project included a total of 2,950,000 square feet of office, retail and hotel uses plus 300,000 square feet of above grade parking, a maximum of 3,105 total parking spaces (including Navy fleet parking) and 1.9 acres of open space. The proposed NBC project is slightly smaller at 2,936,050 square feet of office, retail, and hotel uses and includes a total of 2,961 parking spaces and 1.9 acres of open space. The layouts of the two projects are similar and on October 25, 2006 CCDC found the master plan for the proposed project, as conditioned, to be consistent with the Development Plan and Urban Design Guidelines contained in the Development Agreement.

The following is a comparison of the uses approved with the Development Agreement in 1992 with the 2006 proposed NBC project:

Project component	Minimum or Maximum per Development Agreement	Proposed NBC Project (June 2006)
Office	1,650,000 sf Max	1,650,000 sf (incl. 63,000 sf commercial)
Hotel	1,220,000 sf Max  (1500 rooms Max)	1,220,000 sf (incl. 20,000 sf commercial) (1472 rooms)
Retail	25,000 sf Max	25,000 sf
Public Attraction	40,000 sf Min 55,000 sf Max	41,000 sf
Total sf	3,250,000 sf Max	2,936,000 sf
Open Space	1.9 acres Min (plus a north/south passage)	1.9 acres (plus 3-acre north/south passage)
Parking	3,105 Max	2,961

## ENVIRONMENTAL REVIEW:

The City's Land Development Code (Section 128.0103) assigns the responsibility for implementation of the California Environmental Quality Act (CEQA) to DSD. The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals to determine whether there is a potential for such actions to result in physical impacts on the environment.

In 1990, a joint CEQA/NEPA document was prepared for the NBC project. The City prepared and certified the EIR pursuant to CEQA and the Navy prepared the EIS pursuant to NEPA. The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. CCDC is responsible for reviewing the project for consistency with the Development Plan and the Design Guidelines.

In September 2006, DSD was asked to conduct a CEQA evaluation for the proposed NBC project. While the 1990 NBC EIR/EIS analyzed the NBC project in detail, the proposed NBC project was reviewed to determine if the environmental issues associated with the project are still adequately addressed by that document and/or subsequently prepared and certified environmental documents covering the project area.

Section 21166 of CEQA states:

“When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

After its analysis, DSD determined that there are no substantial changes to the NBC project from the 1990 NBC project. Project uses and intensity are virtually the same. It is acknowledged that the Ballpark and Ancillary Development projects located in the East Village were not identified in the 1992 CCDC MEIR or the 1990 NBC EIR/EIS (since they did not yet exist) and therefore were not considered in the cumulative impact analysis for the NBC project. However, because these projects were not anticipated, CCDC required the preparation of a Subsequent EIR for those projects, which incorporated by reference the NBC EIR/EIS and assumed the same build out of land uses adopted for the Downtown Community Plan at that time, which were ultimately used to analyze transportation/circulation impacts, and address regional and local air quality issues. Since the East Village projects were ultimately analyzed with consideration of the NBC project (i.e., they assumed the NBC project’s build-out), DSD does not consider the current NBC project to constitute a substantial change in circumstances, pursuant to Public Resources Code section 21166 above. Furthermore, there is no new information available now that was not either part of the original EIR/EIS and/or considered in subsequent environmental reviews of other downtown and waterfront projects. It was and continues to be assumed that the downtown area, including the NBC site, would build out according to adopted land use plans, including the 1990 version of the NBC project. When the Downtown Community Plan was updated earlier this year, new land use policies were put into place but the assumptions for the NBC site remained. Even if the new land use policies in the updated Community Plan are considered new information, the 2006 EIR prepared for the Community Plan adequately analyzed this information assuming build-out of the NBC site.

Because none of the three events pursuant to CEQA Section 21166 have occurred, and therefore, no new significant or more severe environmental impacts are suggested by substantial evidence to occur, additional environmental review is not required for the proposed NBC project. The proposed NBC project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC project and for other projects in the vicinity. Project impacts remain adequately addressed and the mitigation adopted for the 1990 NBC project will be implemented.

#### ENVIRONMENTAL APPEALS:

Section 21151(c) of CEQA states that “if a nonelected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency’s elected decision making body”. While no environmental document was prepared or determination made relative to the proposed 2006 NBC project, it has been determined by the City Attorney’s office that the evaluation prepared by DSD pursuant to CEQA Section 21166 is an appealable determination under section 21151(c). The action taken by CCDC to adopt DSD’s Section 21166 evaluation is also appealable as described in Section 112.0520 of the Land Development Code.

Two separate appeals were filed on the NBC project. The first appeal was filed on October 26, 2006 by Ian Trowbridge. The second appeal was filed on November 6, 2006 by Kathryn Rhodes and Conrad Hartsell, M.D. Both of the appeals cite DSD’s Section 21166 evaluation and CCDC’s approval/adoption of DSD’s Section 21166 evaluation as grounds for the appeals.

The following is a summary of the issues raised in the appeals with staff’s responses.

#### **Ian Trowbridge and Broadway Complex Coalition Appeal (Attachment 2)**

##### **Consideration of Previously Certified EIRs**

The Appeal states that the use of the 1990 NBC EIR/EIS along with other EIRs certified in the downtown area is not sufficient to analyze the proposed NBC project. It also questions the conclusions of the CEQA Section 21166 evaluation pertaining to the three conditions that would require additional environmental review. Conclusions in the DSD memo regarding the CEQA Section 21151(c) appeal process are also questioned.

**Staff Response:** The existing certified environmental documents are sufficient to address the proposed NBC project. Section 128.0209(b) of the Land Development Code (LDC) states that if a previously certified document is to be used, DSD shall provide the decision-making body with an explanatory letter stating that none of the conditions specified in the State CEQA Guidelines, Section 15162 (Section 21166 of the Statutes) exists. The LDC Section goes on further to state that an EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the

same and are consistent with the State CEQA Guidelines, Section 15153. DSD concluded that none of the three conditions cited in CEQA occur in this case. A CEQA Section 21166 evaluation generally involves the review of a previously approved project for which modifications are proposed, but which is substantially in conformance with the previously approved entitlements and certified environmental document.

CEQA Section 21151(c) provides for the appeal of a certification of a Negative Declaration or Mitigated Negative Declaration, or the determination of exemption, to the elected decision making body. Even though the CEQA Section 21166 evaluation done for the NBC project does not include the certification of an environmental document or the determination of exemption, it was determined by the City Attorney's Office that the evaluation and CCDC's approval/adoption of the evaluation was appealable.

### **CEQA Section 21166 Evaluation**

The Appeal states that the CEQA Section 21166 analysis conducted by DSD staff did not take into consideration any changes in the project scope, circumstances under which the current project is being undertaken, or any new information that could not have been known at the time the original environmental impact report was prepared. Specifically, the Appeal claims that changes in state laws and regulations, property transfers, and the worldwide war on terror have occurred. The appeal also questions the stability of the proposed Master Plan design submitted to CCDC in June 2006 for a consistency review.

**Staff response:** For the purpose of conducting the CEQA analysis, DSD staff considered all of the proposed NBC project components. After review of the 1990 EIR/EIS prepared for the project and subsequent environmental documents for projects in the Centre City Community Plan area, DSD determined that the NBC project is consistent with the project described and approved in 1992 and that no new significant environmental impacts or more severe impacts are likely to result from the current proposal.

The original 1990 project elements and the proposed project are virtually the same in terms of use and intensity. The gross square footage proposed in 2006 is slightly less than that approved in 1990 and all required elements included in the previously approved project have been incorporated into the current design. For the purposes of a CEQA analysis, a new environmental document would be required if the proposed project would result in new significant environmental impacts not addressed in the previously certified document or more substantially more severe environmental impacts than previously disclosed. That is not the case with the proposed project, which does not result in new impacts. Additionally, the developer would be required to implement the same Mitigation Monitoring and Reporting Program (MMRP).

Staff does not disagree that changes have occurred in the Centre City area over the past sixteen years. Clearly there is more residential and commercial development in Centre City now than there was in 1990. However, the currently proposed NBC project was anticipated in the environmental impact reports prepared for several subsequent development projects within the Centre City area, and this project was found to be consistent with the 1992 community plan or the community plan was amended to accommodate it. While it is true

that there has been an increase in traffic resulting from an influx of people moving into the area since 1992, the measures contained in the final 1990 EIR/EIS and for any other project related environmental document in Centre City would still be necessary to alleviate the current congestion situation

### **Changes in the Project**

The Appeal questions DSD's conclusion that the 1990 and 2006 projects are similar. Specifically, the Appeal identifies the current condo-hotel concept as a new component that was not previously analyzed and that the recent negotiations between the developer and the Mayor's Office regarding additional open space could change the open space configuration of the project.

**Staff Response:** The NBC project always included hotel uses on-site and those are allowed under the Development Agreement. Subdivisions (e.g., condominiums) are a financing mechanism to allow for the sale of individual units. The term "condo-hotel" is not a separate use classification. The City's Land Development Code defines a hotel as "a building containing six or more guest rooms that are rented for less than 30 days and used or designed to be used for sleeping purposes." As long as the use continues to be transient in nature, it is still considered to be a hotel, by definition.

Consistent with the 1990 NBC project, the development plans reviewed by DSD staff included the provision for 1.9 acres of open space/park use and 41,000 sf of museum/public attractions. Although negotiations regarding the purchase of property within the Navy-owned parcel for the purpose of expanding public open space may be on-going, DSD staff was required to review the plans submitted to CCDC in June 2006 for consistency review pursuant to Section 21166 of CEQA, which did not include the transfer or sale of land. The assumption that these negotiations would result in a reconfiguration of the projected uses is too speculative at this time to analyze. According to Section 15145 of the State CEQA Guidelines, "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." In this case, however, the review conducted by DSD did not, and could not anticipate further negotiations between the developer, the Navy and the City regarding the transfer of land for additional open space. As such, this issue was not considered in the CEQA Section 21166 analysis, because it is not currently a reasonably foreseeable part of the project presented for review.

### **Project Reference in Previously Certified EIRs**

The Appeal questions the sufficiency of using previously certified EIRs prepared for other development projects within the CCDC project area that incorporate by reference the NBC project.

**Staff Response:** According to Section 15150 of the State CEQA Guidelines, incorporation by reference of the NBC project analysis within environmental documents prepared after the 1990 EIR/EIS was certified is adequate and consistent with CEQA. Incorporation by reference is a necessary device to reduce inconsistencies between EIRs. This section of CEQA authorizes use of incorporation by reference and provides guidance for using it in a



manner consistent with the public involvement and full disclosure functions of CEQA. A public review and comment period was provided at the time of draft distribution in accordance with CEQA for all environmental documents used in the 21166 analysis. Although not analyzed in detail within each subsequent document, the fact that the NBC project is mentioned and included in the cumulative impact analysis for several of the documents is consistent with CEQA. Furthermore, CEQA requires the discussion of past, present, and reasonably foreseeable future projects in the vicinity in order to adequately address cumulative impacts.

The fact that the NBC project is referenced in these other documents and not further analyzed, does not render the current process invalid. The subsequent environmental documents considered the potential impacts resulting from development of the Navy-owned project site and incorporated consistent mitigation measures or development conditions to reduce community-wide impacts associated with transportation/circulation/parking, air quality, noise, public services/utilities, public health/safety, drainage (i.e. water quality, erosion), and cultural resources.

### **Traffic Impacts**

The Appeal questions the use and/or incorporation by reference of previously certified EIRs and their adopted Mitigation Monitoring and Reporting Programs prepared for development projects within the CCDC project area specific to Transportation/Circulation/Parking. The Appeal further states that although the 2006 Downtown Community Plan Update EIR provides useful, up-to-date traffic information, it cannot be relied upon for the current NBC project.

**Staff Response:** Regarding the use of incorporation by reference as a tool under CEQA, please see the staff responses immediately above. Additionally, while it is true that the NBC project would result in traffic related impacts first identified in the 1990 EIR/EIS, and would contribute to existing and future traffic congestion conditions in the future, the mitigation measures adopted by the City Council and Redevelopment Agency in 1992 and those adopted in 2006 as part of the recent Centre City Community Plan Update would help to reduce significant impacts, but not to below a level of significance in all cases, which is why a statement of overriding considerations was adopted. These measures include, but are not limited to the implementation of Congestion Management Plans; Downtown-wide evaluation of the grid street system at five-year intervals; submittal for review and approval of traffic studies for large projects; parking management plans; initiation of a multi-jurisdictional effort to develop enforceable plans to identify transportation improvements including freeway off ramps and interchanges. Implementing measures adopted for the project, combined with those from other projects in area would help to alleviate the traffic and parking issues community-wide.

### **Coastal Commission Issues**

The Appeal references a letter prepared by the California Coastal Commission to Rear-Admiral Hering, U.S. Department of the Navy, regarding modifications from the original 1990 NBC project to the proposed 2006 version; changing development patterns in

Downtown San Diego; and the need for both a consistency determination from the Navy and a coastal development permit.

**Staff Response:** The issue raised by the appellant regarding changes in circumstances associated with the review of the project by the Coastal Commission for consistency with the California Coastal Management Program is not relevant to the CEQA 21166 analysis. The project site is technically under the jurisdiction of the Federal government and therefore, subject to NEPA. The need for a coastal development permit for the current proposal will be determined by the Coastal Commission as part of the Federal consistency analysis and the issue is therefore, directed toward the Navy and their site developer.

As previously discussed, the development patterns existing in Centre City are consistent with 1992 Community Plan land uses or subsequent amendments to that plan.

### **Inadequate Analysis of Cumulative Impacts**

The Appeal questions the Lead Agency's use and/or incorporation by reference of previously certified EIRs when considering cumulative impacts in the CEQA Section 21166 analysis, specifically with respect to traffic related impacts. The Appeal also questions why the Lead Agency did not foresee or predict the development changes that have occurred over the past sixteen years.

**Staff Response:** Section 15130 of the State CEQA Guidelines provides guidance to Lead Agencies on how to address cumulative impacts in an EIR. As such, a proposed project would be considered with other past, present, and reasonably foreseeable projects in the vicinity, and with which implementation could result in significant environmental changes which are individually limited but cumulatively considerable. When the proposed NBC project EIR/EIS was prepared, there was no way to anticipate the subsequent expansion of the San Diego Convention Center along Harbor Drive; the second Hyatt Hotel tower, or the Ballpark and Ancillary Development currently taking place in the East Village. These subsequent projects either relied on the environmental analysis contained within the CCDC MEIR certified in 1992, or were required to prepare new environmental documents. The same argument would hold true for projects submitted to the Port of San Diego for review under CEQA, including and not limited to the transfer of ownership of the Navy Pier to the Port District or redevelopment of the Cruise Ship Terminal. In addition, Section 15144 of the State CEQA Guidelines clearly states that "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." With respect to forecasting, the *Laurel Heights* Court commented that an agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances. An agency cannot be expected to predict the future course of governmental regulation or exactly what information scientific advances may ultimately reveal. *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376 .

Environmental documents prepared after the 1990 EIR/EIS incorporated by reference any and all relevant, previously certified documents for projects anticipated in the Centre City community. The use of previously certified documents through incorporation by reference is a standard practice amongst CEQA practitioners, and is consistent with the State CEQA Guidelines, and specifically, Guidelines section 15150. The CCDC Community Plan Update EIR in 2006 also anticipated mitigation for direct impacts associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance, as well as cumulative impacts to Air Quality and Transportation; however, the impact of buildout of the proposed Community Plan and Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable. These issue areas, which were addressed on a community-wide basis, take into consideration past, present and reasonably foreseeable future projects.

### **Changes in Water Quality Laws**

The Appeal references specific changes in State law and local regulations during the past sixteen years related to water quality. Specifically, the Appeal questions why the Lead Agency did not require new qualitative analysis for the proposed NBC project relative to its location within proximity to a State identified impaired water body.

**Staff Response:** The 1990 EIR prepared for the NBC project thoroughly evaluated potential impacts from the proposed project on water quality within San Diego Bay under the subheadings “Geology and Seismicity” and “Hydrology” in the Physical Environment section. Specifically, the EIR/EIS includes a discussion addressing the effects of the project associated with soil erosion and hydraulic conveyance of sediments downstream of the project site into San Diego Bay; and a discussion addressing surface hydrology and drainage across the site during construction. At the time of the 1990 EIR/EIS preparation, both the EPA and the Regional Water Quality Control Board (RWQCB) expressed concerns about potential nonpoint source water contamination resulting from accidental construction related fuel spills and/or from construction related runoff across the site. The RWQCB was consulted on these issues and indicated that they had not yet adopted standards or programs for accidental spill response or for control of runoff water quality, but that once developed, the programs would be implemented by municipalities and not directed toward individual developments. Mitigation in the form of an erosion control plan was incorporated into the EIR/EIS to reduce potential water quality impacts within and adjacent to San Diego Bay. In addition, authorization to temporarily discharge dewatering waste during project implementation would be obtained from the executive office of the RWQCB. This activity was originally approved under the previous NPDES Permit (CA0108707).

Staff does not dispute the fact that there have been changes in State law relative to water quality and acknowledge the fact that SD Bay is an impaired water body as stated by the RWQCB. As such, the City of San Diego has adopted Stormwater Regulations that requires all project applicants to submit Water Quality documentation to the City of San Diego with application for ministerial (construction grading and/or building permits) and discretionary actions regardless of when the original project was approved and/or whether there is an environmental document with specific mitigation. This information assists staff in

determining whether a Water Quality Technical Report (WQTR) is required. Relative to the NBC project, and in addition to the required mitigation measure identified above, the applicant would be required to complete the Stormwater Applicability Checklist to determine whether a WQTR must be submitted for review during the grading and/or building permit process. If the WQTR concludes that additional measures are necessary to reduce sedimentation and protect the waters of SD Bay, these measures would be incorporated into the construction documents and compliance with the City's Municipal Permit would be assured through implementation of recommendations of the WQTR in accordance with the City's Stormwater Regulations and DSD field inspection section.

### **Geology and Seismicity**

The Appeal references information related to site geology, fault zones, unreinforced masonry construction (URM), and the location of undocumented hydraulic fill within the project site. The Appeal cites specific geotechnical investigations that have been conducted since the 1990 EIR/EIS was approved and the relationship of that new information to the current project site.

**Staff Response:** The 1990 EIR/EIS prepared for the NBC project thoroughly evaluated potential impacts from the proposed project related to "Geology and Seismicity" in the Physical Environment section. Specifically, the EIR/EIS includes a discussion addressing the faulting and seismicity associated with the Rose Canyon Fault Zone, which at the time was considered to present a significant seismic hazard to the coastal San Diego area. In addition, this section of the EIR/EIS addressed the potential for liquefaction resulting from loose, sandy, water-saturated soils subjected to strong seismic ground motion of significant duration. However, the section provides further information indicating that the relatively dense sands and silts of the Bay Point Formation have a low potential for liquefaction and therefore, the site would not be subject to a greater risk of liquefaction than other adjacent areas along the Bay. At the time the EIR/EIS was prepared, the precise location of the Rose Canyon Fault Zone and its associated branches was unknown. The document fully disclosed the potential for strong seismic ground shaking resulting in substantial damage to structures within the project site which was considered a significant impact. As such, mitigation in the form of compliance with building codes was required to mitigate significant impacts. In addition, at the time of grading permit application submittal, the applicant will be required to submit current soils reports and/or conduct subsequent geotechnical (fault) investigations to ensure proper engineering design of new structures on-site. This process is required for all ministerial projects regardless of the conclusion of any previously certified environmental documents.

Unreinforced Masonry (URM) construction is no longer allowed in the State of California and is addressed in the City's URM Ordinance. The "Earthquake Hazard Reduction in Existing Buildings" was adopted by City Council on November 9, 1992. The ordinance established a program for mitigation of seismic hazards associated with buildings containing URM bearing walls (SDMC Chapter 14, Article 5, Division 4). The City's URM Program was developed to help property owners comply with the City of San Diego's URM Ordinance. The goal of this safety ordinance is to save lives by minimizing the possibility of potential collapse of URM buildings during an earthquake. In September 2000, the City of

San Diego sent out a "Date of Service Notification" to all property owners of URM buildings informing them that they must comply with the new ordinance within five years of the notification and informing them that January 1, 2006 was the date by which the URM building owners were required to comply with the mandatory provisions of the URM regulations. In 2004, as part of the City of San Diego's efforts to promote public safety and outreach, DSD posted a list of all Noticed URM buildings requiring retrofitting pursuant to the City Ordinance on the City's web page. In August 2005 another notification was posted reminding property owners that compliance was required by January 1, 2006. A second final notice was distributed on November 1, 2005. In response to the issue raised and based on current City regulations, the applicant for the NBC project would not be permitted to construct URM buildings. All new buildings must be designed to meet current engineering standards and conform to the Uniform Building Code (UBC) pursuant to State and local requirements.

**Public Safety (Police Protection/Law Enforcement & Fire Protection/Emergency Response)**

The Appeal references specific changes in City-wide staffing levels associated with Police and Fire personnel during the past sixteen years as a result of commercial and residential growth in Downtown San Diego. Specifically, the Appeal refers to changes in traffic patterns associated with those new developments and the City's ability to maintain a sufficient level of protection in the area.

**Staff Response:** Environmental review under CEQA is required to address potential adverse effects associated with secondary impacts resulting from construction of a new facility. The availability of public services staff is not, in and of itself, a CEQA issue, as it does not implicate a physical environmental impact. Projects generally are evaluated based on questions posed in the CEQA Initial Study Checklist found in Appendix G of the CEQA Guidelines, which is used by Lead Agency staff to determine if a particular physical impact may occur. In the case of Public Services, the CEQA Initial Study Checklist specifically asks "would the project result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities, the construction of which would cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services." The 1990 EIR/EIS analyzed the effects of new development on public services and concluded at the time that existing Police and Fire facilities, manpower and available equipment are adequate to provide the project site and surrounding area with a sufficient level of police and fire protection in cases of emergency. With respect to manpower, staffing levels fluctuate on an on-going basis, in all departments throughout the City. Furthermore, the reduction and/or need for additional Police and Fire personnel is not considered a CEQA issue, and therefore no additional discussion is warranted. It has been determined that staffing issues associated with Police and Fire personnel is a budget issue relegated to the Budget hearing process conducted by the Mayor and City Council. Therefore, development of the proposed project site would not result in the need for new facilities in the Centre City area.

## **Terrorism**

The Appeal raises concerns about the increased risks of attack on domestic military installations since the terrorist attack on the World Trade Center on September 11, 2001. The Appeal states that this situation could not have been foreseen when the 1990 Navy Broadway Complex EIR/EIS was certified and that the rise of urban terrorism in the United States and the war on terror represent changed circumstances. The Appeal asserts that these changed circumstances require preparation of a project-specific supplemental EIR to analyze the impacts of these changed circumstances on public safety.

**Staff Response:** Matters of national security are typically the purview of the federal government, not local agencies, except where security duties are expressly delegated, and here, the City has every reason to expect that the Navy will implement adequate security precautions.

Analyzing the environmental impacts associated with a threat of terrorist attack is not currently addressed by CEQA, as to date, the Legislature has not seen fit to amend CEQA to expressly require assessment of such impacts. Furthermore, pursuant to CEQA, an impact analysis must only consider those indirect impacts of a project that are reasonably foreseeable. A change that is speculative or unlikely to occur is not reasonably foreseeable. There is no factual evidence in the record currently that suggests the NBC project carries any particularly greater risk of terrorist attack than any other large building downtown; therefore, it is not considered a reasonably foreseeable impact, and there is no compelling basis for requiring further environmental review. In the absence of any substantial evidence of unique facts or circumstances supporting a heightened risk of terrorist attack for this particular project, CEQA does not compel the City to undertake such a study.

## **Parks**

The Appeal states that there is a deficiency in park area downtown and that intensification should only occur if adequate infrastructure and public facilities are provided. The Appeal describes the importance of the waterfront and potential problems with a project like the NBC project locating there. It states that there are large numbers of visitors to the downtown area and that this is a change in circumstance from 1990. The Appeal also states that perhaps a park is the best use of the NBC site and that a Supplemental EIR should be processed to allow the decision makers to consider alternatives, including park use.

**Staff Response:** The 1990 EIR prepared for the NBC project includes the requirement for the project applicant to develop 1.9 acres of public open space within the project site. The proposed NBC project as submitted incorporates the 1.9-acre public open space, as well as providing over 41,000 square feet of museum/public attractions on-site and 3 acres of open area with the north/south passages. The issue of park deficiencies and allocation of public open space within the community plan area at large is not the responsibility of the NBC project, nor can this project be expected to solve this Citywide issue. The issue of public open space was thoroughly addressed in the CCDC Community Plan Update and further debated through the public hearing process, which is the appropriate venue for such discussion.

While the discussion of impacts on parks in the Appeal cites a number of “standards”, these are inapplicable and/or misleading. The adopted Recreation Element of the City’s Progress Guide and General Plan sets forth a series of goals and guidelines for the provision of recreation opportunities in both existing and new communities. “Population-based facilities ideally constitute 1.0 to 3.9 acres of land per 1000 residents depending on proximity to schools and the residential densities of their service areas. Resource-based parks should provide between 15 and 17 acres/1000. Open space lands, sports fields, plazas, and landscaped areas should constitute approximately 1.1 to 2.0 acres/1000 residents. These figures are norms or abstract concepts, however, and should not be rigidly applied throughout the City.”

Based on these adopted City policies, there is no requirement for the development of the NBC site to provide parkland because City park “standards” are based on acres for residential population, of which the project proposes none. Indeed, the development agreement for the NBC project proposes an excess of parkland as compared to what would be required to satisfy the City’s General Plan.

The City has a standard for determining the amount of park space a project must provide based on the number of residents that will live in the project once developed. The 1990 EIR/EIS uses this standard to conclude that the project would not cause new demands on park facilities because the project does not include any residential uses. The project has not changed since the 1990 EIR/EIS was certified to include any residential uses. Therefore, the conclusions of the 1990 EIR/EIS with respect to recreational impacts are still valid.

As explained above, the City’s parks standards are based solely on residential density, not commercial and office uses such as this project. However, to the extent that the commercial uses of the NBC project would create psychological or aesthetic demand for park space, such as passive-use outdoor areas for the project’s office workers to eat lunch or rest after work, the proposed NBC project includes 4.9 acres of open space/park area. These spaces are expected to adequately serve the type of limited-hours demand for parks that such commercial uses may generate, although there are no established criteria or regulatory requirements to assess this issue for commercial and office uses.

Finally, there is no requirement under CEQA that the City must assess new alternatives to the design of the project to consider additional open space or parks within the design. There are no new significant impacts on parks and open space associated with this project; but the project results in 4.9 acres of new parks and open space being added to the downtown’s inventory. Therefore, no new alternative analysis of this issue is necessary or required.

### **Financial Impacts**

The Appeal references the preparation of a fiscal impact report for the 1990 EIR/EIS. Specifically, the Appeal questions the applicability of the original report relative to property tax estimates based on 2003 buildout estimates and project occupancy in 2005.

**Staff Response:** Fiscal impacts of the proposed NBC project are not a subject of the CEQA Section 21166 analysis. The applicant has vested rights to develop this property pursuant to the approved Development Agreement. Funding associated with implementation of project components identified in the 1990 EIR/EIS Mitigation Monitoring and Reporting Program that are the responsibility of the City (such as, but not limited to, roadway improvements, park development and public services) will be addressed at the time construction documents for the NBC project are submitted for the ministerial permitting process. In addition, CEQA Section 15131 states that economic or social effects of a project shall not be treated as significant effect on the environment. Such effects of a project are only relevant under CEQA to the extent that they may result in indirect physical changes to the environment, such as urban blight. Public Resources Code Section 21082.2(c) states that evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment is not “substantial evidence” that would show those impacts to be significant.

**Project Not Stable and Not Legally Sufficient**

The Appeal asserts that the project proposed by the applicant is inconsistent with CEQA Section 15124 which requires specific information to be included in the project description of an EIR. The Appeal also questions the change from a traditional hotel to a condo-hotel and the negotiations surrounding the potential purchase of lease rights of the Navy-owned Parcel 2A.

**Staff Response:** This section of CEQA provides information to Lead Agencies and EIR consultants regarding the requirements for describing a proposed project in a way that will be meaningful to the public and about the importance of a clearly written statement of project objectives. This section also requires that all EIRs include a statement of how the Lead Agency and any Responsible Agencies will use the EIR in their approval or permitting processes, and further encourages Lead Agencies to consult with other agencies and integrate CEQA review with other related environmental reviews; consistent with Public Resources Code Section 21003.

The project currently proposed for the Navy-owned parcel is located within the same footprint as originally analyzed in the 1990 EIR/EIS. The project boundaries are the same and all components of the original project have been carried forward that were identified in the 1990 EIR/EIS and Development Agreement. The current proposal still provides 1.9-acres of public open space; over 41,000 square feet (sf) of museum and public attractions; 25,000 sf of retail space; 1,220,000 sf of hotel space, and extensions of Streets E, F and G through the project site. The only modification from the original site plan involves the redistribution of private commercial office space from 1,650,000 sf approved in 1990 to 1,229,000 sf in 2006; and Navy office space from 1,000,000 sf in 1990 to 351,000 sf under the 2006 proposal. This modification, while changing the overall amount of square footage dedicated to Navy and/or private commercial office use, is actually less combined than what was originally approved (1,650,000 sf in 1990 versus 1,580,000 sf in 2006) and would not change the conclusions of the EIR/EIS prepared in 1990 with respect to the project description. The current proposal is therefore consistent with the total amount approved in the Development Agreement. The proposed office and hotel uses are allowed under the Development Agreement. Subdivisions (aka office or hotel condominiums) are a financing



mechanism to allow the sale of individual units. Condo-hotel is not a separately recognized use classification utilized by the City. The City's Land Development Code defines a hotel as "a building containing six or more guest rooms that are rented for less than 30 days and used or designed to be used for sleeping purposes." The Development Agreement is silent with respect to a subdivision. However, based on comments provided by the appellant, the condo-hotel subdivision appears to be a potential issue with the Coastal Commission because it regulates such subdivisions in order to maintain the visitor-serving character of coastal property within its jurisdiction.

The development plans reviewed by DSD staff included the provision for the required 1.9 acres of park/ open space use and 41,000 sf of museum/public attractions. Although there are on-going negotiations regarding the purchase of property within the Navy-owned 2A parcel for the purpose of expanding public open space, DSD staff were required to review the site plans submitted for consistency pursuant to Section 21166 of CEQA. The review conducted by DSD did not, and could not anticipate further negotiations between the developer, the Navy and the City regarding the transfer of land for additional open space. As such, this issue was not considered in the Section 21166 consistency analysis.

### **Public Participation**

The Appeal asserts that DSD ignored the requirement for public participation during the CEQA 21166 consistency analysis, thereby rendering the determination of consistency with the 1990 EIR/EIS invalid.

**Staff Response:** Staff concurs that public participation is an essential part of the CEQA process. As such, the City adheres strictly to the requirements for public review as defined in Section 128.0301-128.0314 of the City's Land Development Code, as well as Sections 15070-15097 of the State CEQA Guidelines. CEQA Sections 15070-15097 provide direction to Lead Agencies regarding the preparation and distribution of draft environmental documents for discretionary projects, of which public review and comment is an integral part. In the case of the NBC project, the applicant has vested rights to develop this property pursuant to the approved Development Agreement. Public participation for the 1990 NBC project submitted to the City of San Diego and CCDC was initiated in 1992 when the draft EIR/EIS was distributed for public review pursuant to CEQA. In addition, public hearings were held in 1992 which resulted in project approval, certification of the EIR/EIS, adoption of a Mitigation Monitoring and Reporting Program and Execution of a Development Agreement. The current action involves the review of a previously approved project which proposes minor modifications, but is substantially in conformance with the approved entitlements and certified environmental document. Because there is no new discretionary permit being requested, this process, which is a ministerial action, does not require a public review period pursuant to Sections 128.0203 and 128.0209 of the LDC.

Furthermore, Public Resources Code section 21166 does not require that a public review and comment process be provided during an agency's determination of whether or not a subsequent or supplemental EIR is required. If DSD had determined that a subsequent or supplemental EIR was required, that additional analysis would have been subject to the same

public review and comment requirements as for an EIR for an original project. However, since DSD determined that no further review was required under CEQA, there is no requirement under CEQA to afford a public review and comment process for this determination.

### **Katheryn Rhodes and Conrad Hartsell, M.D. Appeal (Attachment 3)**

#### **Geology and Seismicity**

The Appeal identifies several areas of concern relative to geology and seismicity that the appellants feel should warrant additional environmental review. Each of the topic areas are identified separately with responses provided.

##### **a. Analysis of Geology and Seismicity Impacts**

The Appeal raises concerns about the analysis of geology and seismicity impacts for the NBC project. The Appeal states that the 1990 EIR/EIS analysis of geologic impacts is no longer valid due to changes in circumstances. The changed circumstances asserted in the Appeal include changes in the status of faults, changes in methods for measuring impacts, and changes in the law.

**Staff Response:** While it is acknowledged that several changes have occurred with respect to information known about geologic circumstances since 1990, these changes were adequately addressed most recently in the 2006 Downtown Community Plan EIR. That EIR assumed construction of the NBC project and therefore incorporated the NBC project into its impact analysis. As discussed in more detail below, reliance on the 2006 Downtown Community Plan EIR for an analysis of geologic impacts with respect to the NBC project is proper under CEQA, and therefore no further environmental review of geologic impacts is necessary at this time. The new information and changed circumstances are reflected in the 2006 Downtown Community Plan EIR, and that EIR adequately analyzed the environmental impacts associated with these changed circumstances for the NBC project. Furthermore, the 2006 EIR identified potentially significant impacts for future development as a result of seismic ground shaking that would be reduced to below a level of significance through implementation of the goals and policies in the Community Plan. This includes the requirement to submit for City review a full fault investigation prior to the issuance of any grading or building permits. As with any major building project in the City, the NBC project will be subject to these same requirements.

##### **b. Changes in the Status of Rose Canyon Fault Zone and Fault Zone Mapping**

The Appeal's central concern appears to be the change in status of the Rose Canyon Fault Zone from "inactive" to "active", which resulted in a change in the Uniform Building Code (UBC) designation for the City of San Diego from Seismic Zone 3 to Seismic Zone 4, the highest zone of ground shaking hazard. The Appeal also states that many new active faults have been discovered in downtown San Diego since 1990, prompting creation of the Point Loma Quadrangle Alquist-Priolo map in the mid-90s and a 1997 requirement that the then-existing Alquist-Priolo map be revised. The Appeal notes that the NBC project site is very close to the active fault zone. The Appeal includes a fault location map from a 2001 California Geology article as

Figure 3 and notes that the Coronado fault has been extended to the edge of the Port District property directly south and within several hundred feet of the NBC project site.

**Staff Response:** The 2002 Geologic Hazards Study prepared for the 2006 Downtown Community Plan acknowledges that faulting and related seismic hazards are key issues in the downtown area because of the presence of the Rose Canyon Fault Zone, which crosses the downtown area with a complex pattern of faulting that includes active and potentially active fault traces. The purpose of the Study was to provide an overview of potential geological hazards that may affect planning in the Downtown Planning Area, and the emphasis of the study was to summarize pertinent new information available since about 1992.

Figures 4 and 5 attached to the Rhodes Appeal are maps reproduced from the 2006 Downtown Community Plan EIR. These maps show the active faults within the Rose Canyon Fault Zone and reflect the new information regarding the Coronado fault, which is now known to extend under the San Diego Bay with no known northern boundary line. These are the maps relied on for the 2006 Downtown Community Plan EIR analysis of impacts, which assumed buildout of the NBC project. These maps reflect the most up-to-date fault information. Thus, the potential geologic and seismic impacts of the NBC project have been adequately addressed and fully account for the current fault status.

**c. Age of Geologic Investigation**

The Appeal states that “standard practice says that geotechnical investigations should not be relied upon after three years”.

**Staff response:** While it is not a requirement or legal standard, it is a generally accepted practice standard that geologic investigations are valid for three years. After three years it is a good practice to get the investigation updated or at least revisited. In the case with the NBC, a 1982 Seismic Safety Study and 1990 Geotechnical investigation were considered with the certification of the 1990 EIR/EIS. A geologic hazards study was also prepared with the 2006 Community Plan EIR, which is typical for a community-wide, program-level EIR. As noted above, the 2006 Community Plan EIR assumed build-out of the NBC project. However, in order to fully comply with seismic safety development standards and the Uniform Building Code, the City will also require a fault investigation report prior to the issuance of grading or building permits, just as it would for any other major building project in the City.

**d. Undocumented Hydraulic Fill**

The Appeal states that the project site is underlain by undocumented hydraulic fill associated with the dredging of San Diego Bay. According to the Appeal, the area west of the train tracks generally consists of undocumented hydraulic fill over bay deposits over the Bay Point Formation.

**Staff Response:** The 2006 Community Plan EIR and associated Geologic hazards Study acknowledge the existence of hydraulic fill in the vicinity of the NBC project site. Such fill is classified as “undocumented” when it has not been tested for compaction. This is typically

the case. Based on the existence of the hydraulic fill, the 2006 EIR identifies the area as susceptible to liquefaction. The stability of the site and the appropriate design of the buildings will be analyzed prior to issuance of building permits.

**e. Changes in the Law**

The Appeal notes that the 1986 Unreinforced Masonry (URM) Building law called for inventory and mitigation planning for all pre-1946 URM buildings located in Seismic Zone 4. The Appeal goes on to note that, as the City is now considered to be in Zone 4, several hundred buildings in the City had to be demolished or seismically upgraded and, as a result, the assumed density at build-out of the City has changed from the assumptions in 1990.

**Staff Response:** The 1990 EIR/EIS assumed a population of 12,132 people. In 1992, the estimated population build-out was 48,000 and the 2006 estimated population at build-out is 89,100 people within the Centre City area. While the Appeal is correct in its recitation of changes in the URM Building law and its effect on population estimates at build-out of the City, the 2006 Downtown Community Plan EIR was prepared after the City was designated as within Seismic Zone 4 and therefore includes these revised assumptions regarding population at buildout. Additionally, as noted above, the 2006 EIR also assumed build-out of the NBC project in its impacts assumptions. Therefore, the 2006 EIR adequately addresses the significance of new population estimates, including those relating to any changes in building supply downtown.

The Appeal notes another change in the law, the 1995 City of San Diego Seismic Safety Study designating the Downtown Special Fault Hazard zone, which requires site specific fault investigations for proposed downtown developments. The 1990 EIR/EIS was based on the 1982 Seismic Safety Study and, at the time the 1990 EIR was certified, the possible presence of an underwater active fault line beneath the NBC project site was anticipated, but the law did not then require fault investigations.

The Geologic Hazards Report for the 2006 Downtown Community Plan recognizes that the Unified Building Code identifies San Diego as lying within Seismic Zone 4, and with inclusion in this Zone, structure design will become more stringent with regard to seismic shaking mitigation. The 2006 Downtown Community Plan EIR requires that development in downtown implement all seismic-safety development requirements, including City requirements for the Downtown Special Fault Zone and building codes. In fact, the Appeal cites the 2006 Downtown Community Plan EIR as evidence to show that fault investigations are now required. As noted above, the City will require detailed fault investigation information to be submitted by the project developer at the time of building permit application or before, just as the City does for any other major building projects.

**f. Changes in Methods Used to Study Fault Activity**

The Rhodes Appeal also lists several changes in the methods used to study fault activity, including response spectra analysis, use of stone columns, and underwater fault investigations using high resolution seismic reflection surveys. The Rhodes Appeal also notes that equations for liquefaction analysis have changed since 1990.

The Rhodes Appeal asserts that specialized fault investigations, using techniques such as high resolution seismic reflection surveys, extending below the water table into the Bay Point Formation should be conducted to rule out the presence of an undocumented active fault line.

**Staff Response:** The Geologic Hazards Report recognizes that the Downtown Special Fault Zone was established in 1992 and, as a result, the City now requires geologic hazard investigations as part of the building permit and or discretionary permit process for proposed developments. The City requires site specific investigations of potential fault hazards within this Zone.

**g. CEQA Analysis of these Changed Circumstances**

The Appeal states that the Consistency Analysis conducted by DSD incorrectly implies that a fault investigation is not needed as part of the CEQA document and that the old 1990 geotechnical investigation without a fault investigation is still valid today. The Appeal goes on to cite the Downtown Community Plan EIR as evidence that the City of San Diego CEQA laws are not being followed and the standard of practice is not being met, the Environmental Impact Significance Criteria is GEO-A, because it exposes people or structures to substantial risk or injury or loss of life, or destruction of property caused by seismic or geologic hazards. The Appeal claims that, based on this fact alone, as a matter of public safety, a CEQA consistency analysis cannot be made by DSD or the City Council.

**Staff Response:** The Appeal is correct that geologic impacts are recognized by CEQA and that Appendix G of the CEQA Guidelines includes recommended significance criteria asking whether a project would: “expose people or structures to potential substantial adverse effects involving rupture of a know earthquake fault zone, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area; strong seismic ground shaking; seismic-related ground failure, including liquefaction, or be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.”

As noted in the Appeal, the 2006 Downtown Community Plan EIR relied on this threshold of significance to analyze geologic and seismic impacts associated with development of the downtown area, including the Navy Broadway Complex project. As the Project Description for the 2006 Downtown Community Plan assumed development of the NBC project, the analysis of geology and seismicity impacts in the 2006 Downtown Community Plan EIR necessarily considered potential impacts associated with development of the NBC project.

The 2006 Downtown Community Plan EIR concluded that geologic and seismic impacts are less than significant. While nearly all of downtown is located within approximately one mile of the Rose Canyon Fault Zone, and buildout of the community plan (which includes NBC) would increase the number of homes, offices, and retail space in the area, the potentially significant impact is reduced to a less than significant level through implementation of goals and policies of the Downtown Community Plan. The goals and policies include: maintaining

a safe and livable environment by mitigating and avoiding risks posed by seismic conditions; creating an open space network in areas where development is precluded by faults to the greatest extent possible; implementing all seismic-safety development requirements, including the Alquist-Priolo Zone Act, City requirements for the Downtown Special Fault Zone and areas subject to potential liquefaction and building codes; coordinating with the City to enforce Ordinance 18451 for unreinforced masonry building reinforcement and require appropriate reinforcement of URM buildings integrated into new development; and, where active faults are found and building cannot take place, working closely with developers to provide publicly-accessible open space. In addition, conformance to building construction standards for seismic safety within the UBC would assure that new structures would be able to withstand anticipated seismic events within the downtown planning area.

### **Timing and Scheduling of the Project**

The Appeal states that the 1990 EIR/EIS is no longer valid because the redevelopment schedule was based on completion date of 2003; that based on a statement from a California Coastal Commission letter to the Department of the Navy that significant physical changes to the landscape along the waterfront, a reassessment of the project is required possibly resulting in the need for a coastal development permit. The Appeal further states that the project requires certain infrastructure improvements that are the responsibility of the City of San Diego.

**Staff Response:** The original Development Agreement was executed in 1992. The Agreement outlines the specific uses, building size, height and design guidelines, as well as requirements to complete significant public improvements. The Agreement also included a clause stating that if a developer lease was not signed by January 1, 2002, the Agreement would expire. In late 2001, at the request of the Navy, and to prevent the entitlements from expiring, CCDC staff processed an Amendment to the Agreement to extend its deadline for one year. That extension, which changed the expiration date from January 1, 2002 to January 1, 2003, was approved by the City Council in December 2001. At the time, although the Navy indicated that development on the site was being considered, there was no possibility that a developer lease could be signed by the new date. As a result, CCDC staff recommended a second extension of the Agreement to retain the entitlements. The second Amendment to the Agreement, which was adopted on January 7, 2003 expires on January 1, 2007.

The issue raised by the appellant regarding changes in circumstances associated with the review of the project by the Coastal Commission for consistency with the California Coastal Management Program is not relevant to the CEQA 21166 analysis. The project site is technically under the jurisdiction of the Federal government and therefore, subject to NEPA. The need for a coastal development permit for the current proposal will be determined by the Coastal Commission as part of the Federal consistency analysis and the issue is therefore, directed toward the Navy and their site developer.

Fiscal impacts of the proposed project are not a subject of the CEQA 21166 consistency analysis. The developer has vested rights to develop this property pursuant to the approved Development Agreement. Funding associated with implementation of project components

identified in the EIR/EIS Mitigation Monitoring and Reporting Program and the approved Development Agreement that are the responsibility of the City (such as, but not limited to, roadway improvements, park development and public services) will be addressed and negotiated at the time construction documents for the NBC project are submitted for the ministerial permitting process review.

### **Open Space and Parks**

The Appeal references several sections of the 1990 EIR/EIS with respect to proposed open space and park area required for the NBC project and further states the need for additional public parkland based on other development projects in the vicinity not envisioned in the original environmental document and the impact of tourist traffic and parking on the waterfront.

**Staff Response:** The development plans reviewed by DSD staff include the provision for required museum/public attractions and 1.9 acres of open space. Although additional development is occurring in the Centre City area which ultimately will result in the need for additional open space, those requirements would be borne by the individual project developers and are not the responsibility of this project. In addition, resolving the deficiency of parkland within the community plan area is not the responsibility of the NBC project, nor can this project be expected to solve this community-wide issue. Additionally, see staff response above to the parks/open space issues raised in the Trowbridge appeal.

Issues associated with development of Port land, specifically the Cruise Ship Terminal and B Street Pier is not a subject of the CEQA Section 21166 evaluation. However, these future projects are referenced in the North Embarcadero Visionary plan EIR and in the 2006 Community Plan EIR, neither of which include residential development that result in park needs.

### **Parking**

The Appeal raises concerns about the number of parking spaces provided and states that parking should be provided in accordance with City-wide adopted ratios. The Appeal also states that the Municipal Code was changed to require a minimum amount of parking where in 1990, there was no minimum or maximum. The Appeal claims that the 1990 NBC EIR/EIS assumed that parking would be available at Lane Field and at the County Building for users of the NBC project but that this parking will not be available.

**Staff Response:** The 1992 Development Agreement established a Development Plan and Urban Design Guidelines which govern the development of the site, including the amount of parking to be provided within the development. These requirements are vested in the 1992 Agreement and are not superseded by subsequent zoning regulations adopted within the Centre City Planned District Ordinance (PDO). The Agreement established maximum parking ratios for the development based on land uses such as hotel, office and retail. The 1990 EIR acknowledged that, at the time of the Agreement's approval, there were no minimum or maximum parking requirements in the Centre City area. The EIR, however, evaluated parking demand for the project and concluded that with the availability of transit in

the downtown area and the adoption of a Transportation Demand Management Plan (required for each phase of the project), the development would provide an adequate amount of on-site parking and there would be no reliance of off-site parking facilities to meet parking demand.

With regards to the specific issues raised in the appeal by Katheryn Rhodes and Conrad Hartsell, the EIR estimated the parking demand at 3,105 spaces for the assumed land uses within the development under the proposed Alternative A at the time. However, the actual amount of development and the mix of uses may fluctuate within the parameters of the Agreement, thus affecting the level of parking to be provided. The current proposal is not deficient in that the 3,105 spaces evaluated in the EIR with Alternative A were based on a different sized project. The current Pacific Gateway project proposes to provide parking consistent with the permitted maximum ratios, and therefore is consistent with the EIR's analysis. In addition, the project is not required to comply with current parking requirements of the Centre City PDO – in fact, it is not allowed to through the implementation of the maximum parking provisions of the Development Agreement.

The potential loss of existing surface parking at Lane Field and the County Administration Center parking lots is also not applicable. These parking facilities were acknowledged as an existing condition in the EIR, but the EIR concludes that the on-site parking provided within the Development Agreement's boundaries is adequate to meet parking demand and does not rely on any off-site parking.

The project provides two-levels of underground parking, consistent with the Development Agreement's requirements and goals. The project provides sufficient parking and does not propose any above-grade parking.

Therefore, the current Pacific Gateway proposal complies with the maximum parking limits of the Agreement and is consistent with the level of parking supply evaluated in the EIR.

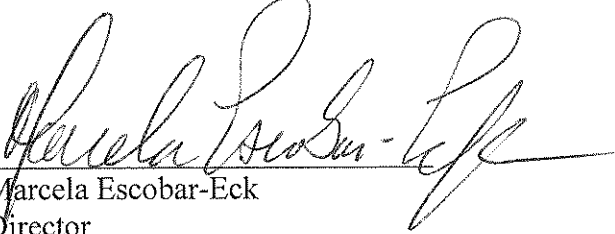
## CONCLUSION

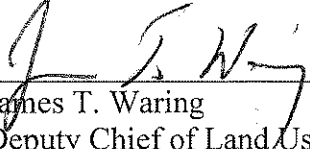
It is Environmental Analysis Section staff's professional opinion that the 1990 EIR/EIS prepared for the NBC project and the subsequent environmental documents prepared for other projects in the vicinity, which were identified in DSD's CEQA Section 21166 evaluation, adequately address the potential environmental issues associated with the current version of the NBC project. None of the conditions outlined in CEQA Section 21166 that would require additional environmental review for the NBC project have been met. Therefore, no additional environmental review is required. It is also staff's professional opinion that the information provided by the appellants does not rise to the level of substantial evidence supporting a conclusion that the project may result in new or substantially more severe significant impacts beyond those previously disclosed.



## ALTERNATIVES

1. GRANT the appeal, set aside the environmental determination, and Direct Staff to conduct additional environmental review with direction or instruction the City Council deems appropriate.
2. GRANT the appeal and direct staff to prepare a new environmental document pursuant to CEQA Section 21166. If Council chooses this alternative, staff respectfully requests that Council identify which subsection(s) of Section 21166 applies and what evidence exists which would lead to the preparation of a new environmental document.

  
Marcela Escobar-Eck  
Director  
Development Services Department

  
James T. Waring  
Deputy Chief of Land Use and  
Economic Development

## ATTACHMENTS:

1. Memorandum from DSD dated October 19, 2006, containing CEQA Consistency Analysis (Section 21166 Analysis)
2. Appeal filed by Ian Trowbridge and the Broadway Complex Coalition
3. Appeal filed by Katheryn Rhodes and Conrad Hartsell, M.D.
4. Ownership Disclosure Statement

To locate the attachments please see the following pages:

Attachment 1 see pages 26 thru 30  
Attachment 2 see pages 31 thru 89  
Attachment 3 see pages 90 thru 112  
Attachment 4 see pages 113 thru 114

CITY OF SAN DIEGO  
M E M O R A N D U M

DATE: October 19, 2006

TO: James T. Waring, Deputy Chief of Land Use and Economic Development

FROM: Robert Manis, Assistant Deputy Director, Development Services

SUBJECT: CEQA Consistency Analysis for Navy Broadway Complex

---

The Development Services Department (DSD) was asked to conduct a CEQA consistency analysis on the proposed Navy Broadway Complex (NBC) for CCDC. The review is limited to consideration of CEQA issues associated with the project and previously certified applicable environmental documents. This review was done pursuant to Section 21166 of CEQA. The NBC project is subject to a Development Agreement between the City of San Diego and the Navy and an EIR/EIS prepared in 1990 (The City prepared and certified the EIR pursuant to CEQA and the Navy prepared the EIS pursuant to NEPA). The City was the lead agency on the EIR and retains CEQA responsibilities as outlined in the Development Agreement. CCDC is responsible for reviewing the project for consistency with the Development Plan and the Design Guidelines.

For purposes of conducting the CEQA consistency analysis, DSD considered the proposed NBC project components. It was found that the proposed Navy Broadway Complex (NBC) project is consistent with the project described in the 1990 EIR/EIS in terms of uses and intensity. The 1990 NBC project included a total of 2,950,000 square feet of office, retail and hotel uses plus 300,000 square feet of above grade parking and 3,105 total parking spaces (including Navy fleet parking). The proposed NBC project is slightly smaller at 2,936,050 square feet of office, retail, and hotel uses and includes a total of 2,961 parking spaces. The layouts of the two projects are similar and CCDC will be reviewing the project for consistency with the adopted Design Guidelines.

DSD's CEQA consistency analysis for the proposed NBC project considered several environmental documents, described below, that have been certified since 1990 in the downtown area.

- **Navy Broadway Complex Project Environmental Impact Report/Environmental Impact Statement (Joint CEQA/NEPA document, October 1990).** Certified by the City of San Diego on October 20, 1992. This document fully analyzed the NBC project at the project level and assumed that build out of the downtown area would occur consistent with the adopted land use plans. The NBC project EIR/EIS also indicates that the precise mix and location (by block) of land uses would be determined by market conditions. As such, it was anticipated that possible changes to the site plan from what was approved in 1992

Page 2  
James T. Waring  
October 19, 2006

would incorporate all relevant mitigation measures identified for transportation/circulation/parking, air quality, cultural resources, noise, etc.

- **Final Master Environmental Impact Report (MEIR) for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency (Resolution #2081) and City Council (Resolution #279875) on April 28, 1992. The 1992 MEIR specifically identified the NBC project within the Land Use section on Page 4.A-17 as follows: "...redevelopment of 1 million square feet of Navy offices; up to 2.5 million mixed commercial, office, and hotel uses, and a plaza at Broadway and Harbor Drive." The MEIR assumed development of the NBC project in the Land Use Impact analysis and anticipated mitigation associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance.
- **Final Subsequent Environmental Impact Report (SEIR) to the 1992 Final Master Environmental Impact Report Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects and Associated Plan Amendments.** Certified by the Redevelopment Agency (Resolution #03058) and the City Council (Resolution #292363) on October 26, 1999. The NBC project is not specifically called out as a project under the Land Use or Cumulative discussion sections of the SEIR. However, in order to determine the short-term and longer-term cumulative impacts with or without the Ballpark and Ancillary development projects, the SEIR assumed build out of the Redevelopment Project Area as defined in the 1992 MEIR which includes the NBC project. In addition, projected land use data in the 2002 SANDAG traffic model was modified to include additional CCDC build out developments consistent with the 1992 MEIR. Since the 1992 MEIR included the NBC project, the same and/or similar intersection, ramp and roadway segment impacts were assumed in the SEIR traffic analysis. Mitigation included an Event Transportation Management Plan, Freeway Deficiency Plan, Parking Management Plan and Transit improvements (all significant/mitigated, unless necessary freeway improvements are not made, resulting in a cumulatively significant and unmitigated impact).

Air Quality was analyzed using the Regional Air Quality Standards (RAQS) for the San Diego Air Basin. Regional impacts from increased traffic would remain significant and unmitigated; however, with proximity to public transit, air emissions would be reduced with implementation of RAQS controls. Potential significant unmitigated, long-term impacts were identified associated with freeway onramp congestion. Recommendation's to implement the Freeway Deficiency Plan were required, but could not be guaranteed.

- **North Embarcadero Visionary Plan Environmental Impact Report.** Certified by the Board of Port Commissioners of the San Diego Unified Port District in March 2000. This EIR assumed development of the NBC project in the Executive Summary and the Land Use discussions. The Visionary Plan Area incorporates the NBC project site, but

Page 3  
James T. Waring  
October 19, 2006

did not include it in the calculation of square footage for the existing and proposed Visionary Plan uses (Table 3.3-1, Page 3-5). The Visionary Plan EIR references the NBC project as an existing entitled project for comprehensive planning purposes and cumulative analysis. The Visionary Plan EIR assumes near-term as 2005 and long-term build out as 2020 for the traffic analysis. A significant unmitigated and cumulative impact was identified for Freeway I-5 and I-5 ramps from 1<sup>st</sup> to 6<sup>th</sup> Avenues; impacts to ramp capacity and ramp meters were also identified and mitigable with implementation of SANDAG I-5 Freeway Corridor Study, which addresses deficiencies on the freeway and associated ramps. The Visionary Plan EIR also anticipated mitigation associated with Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance. The Visionary Plan EIR incorporated development and improvements included in the NBC project, but did not consider the project in the cumulative analysis for Urban Design/Visual Quality. Overall, the Visionary Plan adequately addressed the NBC project and is therefore consistent with the certified EIR/EIS.

- **Downtown Community Plan Environmental Impact Report in Conjunction with a new Downtown Community Plan, new Centre City Planned District Ordinance and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project.** Certified by the Redevelopment Agency and City Council on February 28, 2006. The Downtown Community Plan EIR assumed development of the NBC project in the Project Description and incorporated anticipated land uses and building square footages into the figures and impact analysis. The Community Plan EIR also anticipated mitigation for direct impacts associated with Transportation/Circulation/Parking, Air Quality, Cultural Resources and other project specific measures necessary to reduce potential impacts to below a level of significance, as well as cumulative impacts to Air Quality and Transportation; however, the impacts from implementation of the proposed Community Plan and Planned District Ordinance on parking, grid streets and surrounding streets is considered significant and unmitigable.

One issue identified and evaluated with the CEQA consistency review was on-site parking relative to the minor modifications to square footage in the proposed NBC project compared to the 1990 NBC project. While the total square footage of the proposed NBC project represents a small reduction from the 1990 NBC project, the total number of proposed parking spaces has been reduced from 3,105 to 2,961. The analysis determined that the 3,105 spaces included 230 Navy fleet car spaces, leaving 2,875 spaces for general use. The Navy has indicated that there is currently a need for only 54 fleet spaces. With a total of 2,961 spaces proposed, that leaves 2,907 spaces for general use, more than with the 1990 NBC project.

In conclusion, DSD noted that the proposed NBC project is substantially the same as the 1990 NBC project. The EIR/EIS done for the 1990 NBC project analyzed the project in detail, assuming build out of the surrounding area consistent with the land use plans and identified mitigation for impacts resulting from the project. Subsequent environmental documents in the downtown area, while not analyzing the NBC project at the project level, did reference the NBC project and assumed it would build out in accordance with the 1990 NBC project. Most recently,

Page 4  
James T. Waring  
October 19, 2006

in 2006, the EIR for the Downtown Community Plan Update addressed community-wide policy/land use issues and again, assumed build out of the NBC.

Section 21166 of CEQA states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of three events occur. These events are:

1. Substantial changes are proposed in the project
2. Substantial changes occur with respect to circumstances under which the project is being undertaken
3. New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available

As stated earlier, there are no substantial changes to the NBC project from the 1990 NBC project. Project uses and intensity are virtually the same. It is acknowledged that the Ballpark and Ancillary Development projects, located in the East Village were not identified in the 1992 CCDC MEIR or the 1990 NBC EIR/EIS and therefore not considered in the cumulative impact analysis for the NBC project. However, because these projects were not anticipated, CCDC required the preparation of a Subsequent EIR which incorporated by reference the NBC EIR/EIS and assumed the same build out land uses adopted for the community plan at that time, which were ultimately used to analyze transportation/circulation impacts, and address regional and local air quality issues. Since these projects were ultimately analyzed with consideration of the NBC project, DSD does not consider this to be a substantial change in circumstances. There is no new information available that was not part of the original EIR/EIS and/or considered with subsequent environmental reviews of other projects. It was and continues to be assumed that the downtown area, including the NBC site, would build out according to adopted land use plans. When the Downtown Community Plan was changed earlier this year, new land use policies were put into place but the assumptions for the NBC site remained.

Page 5  
James T. Waring  
October 19, 2006

Because none of the three events have occurred, DSD does not find a need to conduct additional environmental review for the proposed NBC project. The proposed NBC project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC project and for other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified.



Robert Manis

RM/pdh

cc: Marcela Escobar-Eck, Development Services Director  
Kelly Broughton, Deputy Director, Development Services  
Nancy Graham, President, CCDC  
Eli Sanchez, Project Manager, CCDC  
Myra Herrmann, Senior Environmental Planner



City of San Diego  
Development Services  
1222 First Ave. • 3rd Floor  
San Diego, CA 92101-4110  
(619) 446-5210

RECEIVED  
CITY CLERK'S OFFICE

06 OCT 26 AM 10:49

# Development Permit/ Environmental Determination Appeal Application

THE CITY OF SAN DIEGO

See information Bulletin 505, "Development Permit Appeal Procedure," for information on the appeal procedure.

## 1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission  
☐ Process Three Decision - Appeal to Planning Commission  
☐ Process Four Decision - Appeal to City Council

- ☒ Environmental Determination - Appeal to City Council  
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name IAN TROWBRIDGE SAN DIEGO CA 92103 619-795-0155  
Address City State Zip Code Telephone

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

## 4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

DSD memo 10-19-06

10-25-06

Bob  
Manis

Decision (describe the permit/approval decision):

To find that there is no need for a subsequent  
EIR for the Navy Broadway Complex redevelopment by  
Manchester Financial Group

## 5. Grounds for Appeal (Please check all that apply)

- ☐ Factual Error (Process Three and Four decisions only) ☐ New Information (Process Three and Four decisions only)  
☐ Conflict with other matters (Process Three and Four decisions only) ☐ City-wide Significance (Process Four decisions only)  
☐ Findings Not Supported (Process Three and Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See Attached Executive Summary of the  
appeal - backup documents will be provided  
before the appeal is heard at city council.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: J. Trowbridge Date: 10-26-06

Note: Faxed appeals are not accepted.

Printed on recycled paper. Visit our web site at [www.sandiego.gov/development-services](http://www.sandiego.gov/development-services).  
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3031 (06-06)

APPEAL OF THE NAVY BROADWAY COMPLEX CEQA FINDING BY THE  
CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

RECEIVED  
CITY CLERK'S OFFICE

Filed by Ian Trowbridge as an individual and the Broadway Complex Coalition  
October 26, 2006.

OCT 26 AM 10:11

SAN DIEGO, CALIF.

EXECUTIVE SUMMARY

On October 19, 2006 Robert Manis, Assistant Deputy Director, Development Serves issued a memorandum addressed to James T. Waring, Deputy of Land Use and Economic Development titled CEQA Consistency Analysis for the Navy Broadway Complex<sup>1</sup>.

Manis found that the 1990 Environmental Impact Report (EIR) for the Navy Broadway Complex (NBC) was sufficient for the proposed development of NBC by Manchester Financial Group LLC (MFG) and a Subsequent or Supplemental EIR (SEIR) was not required<sup>2</sup>. He asserted that none of the three circumstances that would trigger an SEIR as described in CEQA Section 21166 existed. He also ruled that his opinion was "ministerial" and not subject to appeal as described in CEQA 21151 (c) even though the City Attorney issued a Memorandum of Law on October 4, 2006<sup>3</sup> stating in part "Any CEQA determination associated with CCDC's consistency determinations is appealable to the full City Council".

The Broadway Complex Coalition (BCC) strongly disagrees with the Manis findings that, taken together, were an outrageous attempt to reach the preferred conclusion by the Mayor's Office in violation of Municipal Code §128.0103(b) and then prevent an appeal of the finding to the full City Council.

The Manis finding that the 1990 EIR predicted all the changes in circumstances in downtown San Diego is on the face patently absurd. This appeal will use specific concrete examples of how circumstances have changed and that new information is available such as changes in State law that could not have been predicted in 1990. Each of these findings require the preparation of a SEIR. In addition, some aspects of the project have changed sufficiently to independently trigger the preparation of a SEIR.

The appeal will also include examples of the many predictions in the 1990 EIR and Appendices that were incorrect.

Finally, the appeal will show why all other EIR documents referred to in the Manis document that are claimed to update the 1990 project EIR for NBC are irrelevant.

The environmental impact issues to be analyzed in detail include transportation, circulation and parking, cumulative impact, public participation, public services and utilities, physical environment (geology and hazardous materials), water and air quality, public safety, public access, none of which were discussed in the Manis document.

We respectfully request the City Council reject the DSD position and grant the appeal.



3444 Hawk St.  
San Diego, CA 92103

RECEIVED  
CITY CLERK'S OFFICE

06 OCT 26 AM 10:49

SAN DIEGO, CALIF. *CP*

October 26, 2006

Dear City Clerk:

I am filing this appeal of the City of San Diego Development Services Department's finding that "a Subsequent Environmental Impact Report for the proposed Manchester Financial project on the Navy Broadway Complex site is unnecessary" pursuant to CEQA Section 21151 (c) and all CEQA-related issues concerning this project. The appeal is by Ian S. Trowbridge as an individual and on behalf of the Broadway Complex Coalition.

We have provided an executive summary at the time of filing and we will provide detailed backup material at a later date.

Please confirm that we are proceeding correctly according to the City of San Diego's protocol for filing such an appeal.

Please contact me if you have any questions

Sincerely,



Ian Trowbridge

RECEIVED  
CITY CLERK'S OFFICE

06 NOV -8 AM 10:30

SAN DIEGO, CALIF.

APPEAL OF THE CENTRE CITY DEVELOPMENT  
CORPORATION'S AFFIRMATIVE FINDING OF CONSISTENCY  
OF THE ENVIRONMENTAL IMPACT REPORT FOR THE  
PROPOSED MANCHESTER FINANCIAL GROUP'S  
REDEVELOPMENT PROJECT ON THE NAVY BROADWAY  
COMPLEX SITE PROJECT

BY IAN S. TROWBRIDGE AS AN INDIVIDUAL  
AND THE BROADWAY COMPLEX COALITION (BCC)  
NOVEMBER 8, 2006

## TABLE OF CONTENTS

1.	Executive Summary.....	3
2.	Background.....	5
3.	Inadequate Analysis of Cumulative Impacts.....	9
4.	Changes in Water Quality Laws and New Data Subsequent to the 1990 EIR.....	11
5.	Geology and Seismicity: 1990 Data Obsolete.....	13
6.	Public Safety.....	17
7.	Impact on Parks.....	20
8.	Financial Impacts are Impossible to Analyze for Lack of Data.....	21
9.	The Manchester Project not a Stable Project and not legally sufficient for an EIR under CEQA Law.....	22
10.	Public Participation is an Essential Part of the CEQA Process.....	25
	References.....	26
	Acknowledgements.....	27
Appendix 1	Figures for Section 5	
Appendix 2	Letters of Support	
Appendix 3	Letter from Assembly member Lori Saldaña dated October 5, 2006	
Appendix 4	Letter from SOFAR dated October 3, 2006	
Appendix 5	Letter from California Coastal Commission dated October 24, 2006	

## 1. EXECUTIVE SUMMARY

This document outlines the Appeal by Ian S. Trowbridge, as an individual, and the Broadway Complex Coalition of the affirmative finding of Environmental Consistency of the Manchester Financial Group's 2006 Navy Broadway Complex project made by the Centre City Development Corporation Board of Directors on October 25, 2006.

The Appeal is based on two crucial facts:

(i). The 1990 project-specific Broadway Complex Environmental Impact Report is fatally flawed with respect to the 2006 Navy Broadway Complex project and is not legally sufficient to justify the Environmental Consistency finding by a majority of the Centre City Development Corporation Board of Directors.

(ii). More recent programmatic Environmental Impact Reports do not, and cannot, substitute for the need for a project-specific Supplemental/Subsequent Impact Report for the Navy Broadway Complex under CEQA law.

Here we present the legal arguments and scientific data that support these conclusions.

On October 19, 2006 Robert Manis, Assistant Deputy Director, Development Services issued a memorandum addressed to James T. Waring, Deputy of Land Use and Economic Development titled CEQA Consistency Analysis for the Navy Broadway Complex" (herein referred to as the "Manis Memorandum")

Manis asserted that the 1990 Environmental Impact Report (EIR) for the Navy Broadway Complex (Nay Broadway Complex), together with a cursory review of several unrelated downtown development project EIRs completed since 1990, provide sufficient grounds for assessing the environmental impacts of the proposed 2006 development of Navy Broadway Complex by Manchester Financial Group LLC (MFG). He concluded that completion of a Supplemental EIR (SEIR) is not required by the California Environmental Quality Act (CEQA). He asserted that none of the three circumstances that would trigger a requirement for completion of an SEIR as described in CEQA Section 21166 exist. He also asserted that his opinion was "ministerial" and not subject to appeal as described in CEQA 21151 (c) even though the City Attorney issued a Memorandum of Law on October 4, 2006 stating in part "Any CEQA determination associated with CCDC's consistency determinations is appealable to the full City Council".

The Broadway Complex Coalition (BCC) strongly disagrees with the Manis memorandum that, taken together, attempt to preclude an Appeal of the findings, and subsequent CCDC decisions based on those findings, to the full City Council.

The Manis memorandum that the 1990 EIR anticipated all the changes that have occurred in downtown San Diego is, on its face, patently absurd. This Appeal

will provide specific concrete examples of how circumstances have changed, and details and new information that is available, such as changes in Federal and State laws and regulations, as well as technical data that could not have been foreseen in 1990. Each of these changed conditions require the preparation of a SEIR. In addition, some aspects of the project have changed sufficiently to independently require the preparation of a SEIR.

This Appeal will provide examples of inaccurate forecasting represented in the 1990 EIR and attendant Appendices. The Appeal will also show why all other EIR documents referred to in the Manis memorandum, which Manis asserts have sufficiently updated the 1990 EIR for the Navy Broadway Complex redevelopment project, are irrelevant.

This Appeal will analyze in detail environmental impacts related to:

- Inadequate analysis of cumulative impacts
- Changes in water quality laws, regulations and new data
- Geology and seismicity: 1990 data obsolete
- Public safety
- Parkland deficiency
- Financial impacts impossible to analyze for lack of data
- Manchester Project is not a stable project under CEQA
- Public participation mandated by CEQA

none of which were discussed or analyzed in the Manis memorandum.

We respectfully request the San Diego City Council reject the DSD position, grant this Appeal and instruct CCDC to work with the Navy and the project developer to conduct a supplemental environmental impact assessment and to complete a new project SEIR.

## 2. BACKGROUND

In a memorandum dated October 19, 2006, Robert Manis, Assistant Deputy Director, Development Services issued a memorandum addressed to James T. Waring, Deputy of Land Use and Economic Development titled "CEQA Consistency Analysis for the Navy Broadway Complex" [1]. The memorandum asserted that the 1990 Navy Broadway Complex environmental impact report (EIR) [2] and subsequent EIRs conducted in support of other downtown projects are sufficient to justify a finding that a Supplemental EIR (SEIR) is not required for the proposed 2006 Navy Broadway Complex redevelopment plan submitted by Manchester Financial Group.

The two key elements of this Appeal are 1) the inadequacy of the 1990 Navy Broadway Complex EIR to reflect and address today's realities and, 2) legal mandates of both the California Environmental Quality Act (CEQA) law and the City of San Diego Municipal Code which define when an SEIR is required. The relevant section of CEQA is sec. 21166 cited below:

### § 21166 CEQA:

#### Subsequent or supplemental impact report; conditions:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project, which require major revisions of the original environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which require major revisions to the original environmental impact report.
- (c) New information, which was not known and could not have been known at the time the original environmental impact report was certified as complete, becomes available.

Summarized, when any substantial changes in the project, substantial changes in the circumstances under which the project is being undertaken, or new information that could not have been known at the time the original EIR was done becomes available, an SEIR is mandatory.

As summarized in Section 9, substantial changes in the project have been proposed and, in fact, there is currently no stable project plan that an SEIR could be issued for. Also, substantial changes in the circumstances have clearly occurred over the sixteen years that have elapsed between certification of the 1990 EIR for the Navy Broadway Complex development and today. Growing downtown traffic and transportation problems and the tremendous changes that have taken place in the immediate neighborhoods around the proposed project are examples *par excellence* [3].

In addition, new information has become available that has changed the

circumstances of the project in ways that could not have been foreseen in 1990. The most unequivocal examples are changes in State laws and regulations and new information regarding water quality, the conveyance of the Navy Pier to the Port District [4], and the terrorist attack on the World Trade Center, September 11, 2001 (9/11) and the subsequent worldwide war on terror.

Any of these substantial issues and changes represent sufficient legal grounds to trigger a mandatory SEIR. The litany of issues outlined in this appeal make an overwhelming case that an SEIR is required.

The majority of the Board of Directors of the Center City Development Corporation (CCDC) erred in voting to adopt a CEQA compliance finding with regard to the Manchester Financial Group's current redevelopment project proposal. Furthermore, we believe that these Directors knew, or should have known, that an SEIR is necessary for the project.

### The Manis Memorandum

The Manis memorandum was apparently influential in persuading CCDC Directors to vote for a CEQA compliance finding. However, the Manis memorandum contains little of substance. The memorandum speaks in generalizations and is full of qualified statements. For example it equivocally states, "the layouts of the two projects are similar" referring to the project envisaged in 1990 and the current 2006 Manchester proposal - failing to note that the condo-hotels called for in the Manchester proposal are an entirely new concept, and that, if a proposal being negotiated by the Mayor's office staff and MFG are adopted, configuration of the public parkland south of the foot of Broadway will change significantly compared to what was envisioned in the original EIR.

The Manis memorandum refers to four other environmental review documents. Of these, three are more recent than the 1990 Navy Broadway Complex EIR, the 1999 downtown Ballpark EIR, the 2000 North Embarcadero Visionary Plan EIR and the 2006 Downtown Community Plan EIR (which is currently undergoing a legal challenge for its inadequacy). The Manis memorandum implies that these Programmatic EIRs, that do not analyze the environmental impact of Navy Broadway Complex at a project-specific level, eliminate the need for a project-specific SEIR for the Navy Broadway Complex project - even though CEQA is clear that a project SEIR is required [5]. In fact, the Navy Broadway Complex is barely mentioned in any of these programmatic EIRs, which for the most part simply repeat comments about the project that originated in the original 1990 EIR without any updated analysis.

The Manis memorandum itself also acknowledges the irrelevance of these documents with disclaimers such as "The Navy Broadway Complex project is not specifically called out as a project under land use" [Ref 1 p.2 line 19] and "Subsequent environmental documents in the downtown area, while not analyzing the Navy Broadway Complex project at the project level" [Ref 1 p.3 lines 40-41].

The San Diego Municipal Code §128.0209 defines when a previous environmental document may be used:

"An EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the same and are consistent with the State CEQA Guidelines, Section 15153".

This condition is not met by any of the program EIRs cited in the Manis memorandum certified more recent than to the 1990 Navy Broadway EIR confirming that they have no bearing on whether the 1990 Navy Broadway Complex EIR is adequate for the Manchester Financial Group's 2006 project.

We conclude the Manis memorandum does not conform to either the San Diego Municipal Code or CEQA law and is fatally flawed.

### **Supporting Arguments from Assembly Member Lori Saldaña, the California Coastal Commission, and Save Our Forests and Ranchlands**

Many points made in this appeal are supported by letters to CCDC by Assembly Member Lori Saldaña, the California Coastal Commission and Save Our Forests and Ranchlands (SOFAR), which are appended. Additional letters of support for this appeal from multiple other organizations are also appended.

Assembly Member Lori Saldaña, the California Coastal Commission and SOFAR's comments have a common theme - Substantial Changes in Circumstances have occurred downtown since the certification of the 1990 EIR for the Navy Broadway Complex project.

In her letter, Assembly member Saldaña expresses her concerns about the advisability of siting the new Headquarters of the Navy Region Southwest on the Navy Broadway Complex property in wartime [6]. She believes "a high-rise military facility in a highly populated urban setting could pose a risk to downtown residents, tourists and workers" post-9/11. She also points out that then Captain Len Hering, Commander of Naval Base San Diego gave Testimony at a Congressional hearing in June of 2001 expressing the same view. In part he said:

"Nobody wants to believe that something like Khobar Towers or the U.S.S. Cole could possibly happen in America's finest city; and more importantly, not on a military facility. We all know that is not true... I have come to realize those risks can no longer be taken."

The rise of urban terrorism in the USA and the war on terrorism represent changed circumstances that could not of been predicted in 1990. Consequently, a project-specific SEIR is required to analyze the impact of these changed circumstances on public safety.

SOFAR's comments to the CCDC Board, communicated by the San Francisco law firm of Shute, Mihaly & Weinberger in a letter dated October 3, 2006 focus on the



traffic impacts of the Manchester proposal for redevelopment of the Navy Broadway Complex site [7]. They note that:

"The project will have significant traffic impacts not analyzed in the (1990) EIR/EIS because traffic congestion in downtown San Diego have dramatically increased in the last fifteen years".

SOFAR cites traffic studies to support its findings and concludes:  
"The Board Must Prepare an SEIR to Analyze These Significant Impacts"

In their final arguments, SOFAR raises two more important legal issues:

1. The decision-makers must provide an up-to-date project-level analysis of the Project's traffic impacts. Given this new information, decision-makers must provide the public with an SEIR that includes an up-to-date, project-level analysis of the Project's traffic impacts.
2. If the Project has potentially significant environmental impacts, pursuant to CEQA section 21081, the decision makers must issue findings that it has taken steps to reduce these impacts to a less than significant level.

These two CEQA requirements are so important we further quote SOFAR in full:

"Moreover, this SEIR must include an analysis of potential mitigation measures to reduce these impacts. See CEQA §§ 21002, 21002.1, 21061. One obvious measure would be to require the developer to contribute to a fund to improve public transportation. In this era of rapid development in downtown San Diego, it is essential that CCDC take every opportunity to support and improve public transit. It is only fair that a developer proposing to add thousands of residential units and millions of square feet of commercial space be required to mitigate the significant traffic impacts such development will cause by supporting an alternative to automobile use downtown."

Finally, pursuant to CEQA section 21081, if the Project will have potentially significant environmental impacts, the CCDC Board must issue findings stating that it has taken steps to reduce these impacts to a less-than-significant level. If the Board cannot take such steps, it must issue a statement of "overriding considerations," explaining why, despite the significant, adverse environmental impacts of the project, the Board has decided to adopt a compliance finding anyway.

The CCDC Board cannot rely on its 2006 Downtown Community Plan Update EIR as an update of the 1990 Navy Broadway Complex project-specific EIS/EIR. Although the analysis of the traffic impacts contained in the Community Plan Update EIR provides useful, updated information about traffic conditions in downtown San Diego, the Community Plan EIR as simply a general update of the 1992 Downtown Community Plan Update EIS/EIR", and does not focus specifically on the proposed Navy Broadway Complex redevelopment project."

In a letter to Rear-Admiral Hering dated October 25, 2006, the California Coastal Commission writes [8]:

" Coastal Commission staff believes that modifications have occurred between 1991 and the current version of the project. In addition, new development patterns and intensification of uses have occurred in downtown San Diego since 1991. Both these changes fall within the trigger for a supplementary federal consistency review and constitute impacts to coastal use or resources substantially different than originally described. As such, the Commission staff believes that both a consistency determination from the Navy and a coastal development permit application from the developer are required".

(Underlining added for emphasis.)

The letter goes on to list many specific changes in downtown San Diego and changes in circumstances around the Navy Broadway Complex project area that have occurred. We concur with all the specific changes described in the Coastal Commission's letter and will address some them in more detail in subsequent sections of this appeal.

Faced with the clear facts presented by SOFAR, the California Coastal Commission and this appeals analysis challenging a finding of CEQA compliance, compared to the non-specificity of the Manis report assertions, the omission of facts requiring rejection of a CEQA compliance finding by CCDC, the failure to cite CEQA law in support of the CCDC compliance finding and misrepresentation of CEQA law in the Manis report, CCDC Directors could not have reached a reasonable finding that the current Navy Broadway Complex project proposal did not require an SEIR.

Therefore, we request that the San Diego City Council reject CCDC's decision and direct CCDC to work with the Navy and the project developer to complete an open public supplemental environmental impact analysis and report on the current project proposal.

### 3. Inadequate Analysis of Cumulative Impacts

The original 1990 EIR and several subsequent EIRs looking at the downtown ballpark project and the 2005 downtown community plan update failed to carefully consider the cumulative environmental impacts of projects that have already been planned by the city, CCDC and the Port District, and additional redevelopment projects that can be reasonably expected to take place over the next decade.

The original Navy Broadway Complex redevelopment project EIR did not predict a very significant expansion of the San Diego Convention Center, the construction of a second Hyatt Hotel tower on the waterfront, along with new pedestal structures that block public access from Harbor Drive to San Diego bay, construction of a new Padres ballpark in East Village. It also did not foresee the tentative plans the Port of San Diego has developed over the last 16 years for the redevelopment of the Lane Field site, just north of the foot of Broadway, and adjoining parcels along Pacific Highway (see also California Coastal Commission comments Ref. 8).

In addition, the original 1990 EIR did not foresee or predict that Navy Pier would be conveyed from the U.S. Navy to the Port of San Diego, or that the Port District would plan to significantly redevelop and expand the existing Harbor Drive Cruise Ship Terminal and pier, which will tremendously increase the automobile and pedestrian traffic in and around the Navy Broadway Complex site in the future. The original EIR did not predict that CCDC would approve new high-rise condominium towers along the east side of Pacific Highway just east of the Navy Broadway Complex rising 45 stories, or the additional traffic that those huge buildings will generate in and around the Navy Broadway Complex site.

Additional EIRs developed since 1990 for the Padres Ballpark, a 2005 update of the Downtown Community Plan, and the North Embarcadero Visionary Plan project, while mentioning the Navy Broadway Complex in passing, did not focus specifically on areas adjacent to the Navy site, or even the whole Marina District of downtown, asserting that the Marina District has been built out [9,10]. City staff is now asserting that the very mention of the Navy Broadway Complex in those unrelated EIRs constitutes sufficient environmental review of the new Broadway Complex redevelopment proposal, and all the additional changes that have taken place around it on Downtown's bayfront over the last 16 years.

The EIRs referred to also do not address that other projects are very likely to get built on other sites controlled by the Port District near the Navy Broadway Complex site. Related issues include what will happen when the existing Holiday Inn parcels on Harbor Drive is redeveloped, what will be constructed on the existing Solar parcel north of the Navy Broadway Complex on Harbor Drive, and what will happen as adjoining properties get redeveloped over time? Because the Port District and the City have always allowed piecemeal project redevelopment to take place on Downtown's waterfront, there is no comprehensive vision for what buildings will eventually be built between Lindbergh Field and Seaport Village, between Harbor Drive and Pacific Highway. This comprehensive vision identifying all cumulative environmental impacts on the waterfront can only be achieved by the agencies with jurisdiction over downtown's waterfront agreeing to jointly conduct an open, public Bayfront Precise Planning process that clearly identifies what will be built on all the parcels on downtown's waterfront in the future, something the city, the Port District and the Navy have unfortunately never agreed to do.

A lot of the infrastructure development that has happened in the last 20 years has not been consistent with site-specific planning by CCDC, the City and the Port District. This is partly due to a lack of communications between downtown city planners, CalTrans and the San Diego Association of Governments (SANDAG), the latter two agencies in charge of downtown freeway development. As a result, discussions over changes to the downtown freeways system have not been able to keep up with changes in downtown redevelopment plans. This has created glaring mismatches in the freeway capacity serving downtown and the amount of traffic being directed onto those freeways from new downtown development.

Every day during rush hour, downtown freeways are jammed with gridlock traffic. This condition will only be made worse as new development projects are completed downtown and along the waterfront. For city staff to imply that these

massive and growing traffic problems will all be taken care of by a proposed SANDAG downtown traffic study is ludicrous, especially when such a study has never been scoped or initiated. So say that simply conducting a study fully mitigates current and easily predicted future traffic problems downtown simply makes no sense.

As pointed out in a letter from lawyers for SOFAR the traffic studies being relied on for the 1990 EIR were conducted in 1988 and have no relevance to the current situation in 2006 [7]. They reiterate that although the program EIRs referred to in the Manis memorandum provide useful data for general traffic conditions downtown they cannot substitute for a project-specific SEIR for the Navy Broadway Complex.

In conclusion, the cumulative traffic impacts of already approved redevelopment and the potential contribution of the Navy Broadway Complex, and other waterfront projects being proposed by the Navy's project developer and the San Diego Unified Port District must be fully mitigated before development is approved and allowed to proceed.

#### **4. Changes in Water Quality Laws and New Data Subsequent to the 1990 EIR**

The Navy Broadway Complex EIR/EIS was released in 1990. Since then significant changes in State laws and regulations and environmental monitoring data that are important in evaluating the impact of the project on the water quality of San Diego Bay have occurred. These are:

- **Water Quality Laws and Regulations**
  - Water Quality Control Plan for the San Diego Basin
  - California Toxics Rule
  - Municipal Separate Storm Sewer Systems (MS4) Permit
  - Non-Point Source Pollution Control Program
- **New water and sediment quality data for San Diego Bay**
- **2002 Clean Water Act Section 303(d) listing of impaired water in San Diego Bay**

Since these changes in State law and regulations and new data could not have been known in 1990 and represent significant changed circumstances, an SEIR for the Navy Broadway Complex is mandated. The Manis memorandum contains no mention of water quality and changes in State laws and regulations and new information.

The Navy Broadway Complex is located adjacent to San Diego Bay. The California Regional Water Quality Control Board San Diego Region (RWQCB) has prepared the Water Quality Control Plan for the San Diego Basin. The purpose of the Plan is to preserve and enhance the beneficial uses of the all regional waters including San Diego Bay. The current Basin Plan was adopted in September 8, 1994 supersedes the previous 1975 Basin Plan. It sets forth water quality objectives and their implementation.

The quality of the storm water runoff from this project must comply with the water quality standards in the California Toxics Rule. The Environmental Protection Agency established this rule in May 18, 2000 [11]. In 2000 the California State Water Resources Control Board prepared the implementation policy, which has been amended over time with the latest released in 2005 [12].

Polluted urban runoff is the leading cause of water quality impairment in the San Diego region and nation-wide. Untreated pollutants in urban runoff during both the wet and dry seasons enter our creeks, lagoons and bays via point sources (storm sewer outfalls) and non-point sources. To address the storm sewer issue, the RWQCB developed the Municipal Separate Storm Sewer Systems (MS4) Permit in February 21, 2001 [13]. This permit superseded the generally non-effective storm water permit in effect at that time. The new permit represented a major regulatory step to reduce the pollutants entering the separate storm sewer systems. The Clean Water Act requires that water quality discharge permits be updated every five years. Accordingly the RWQCB has prepared a new permit this year, which has undergone extensive public review and comment. It is expected to be adopted early next year.

To address the non-point source pollution from urban runoff, the State of California has developed a non-point source pollution control program to comply with the Federal Clean Water Act and the Federal Coastal Zone Act Reauthorization Amendments of 1990. For information on this program and The Policy For Implementing and Enforcing the Non-Point Source Pollution Program dated May 2004 refer to the State Water Resources Control Board [14].

Since 1990, new data on the water and sediment quality of San Diego Bay is available from several monitoring programs. This information is important in order to design an effective storm water pollution prevention plan for the Project and selecting the best management practices to remove the pollutants of concern. For example, the data identify "toxic hot spots" in the Bay where the concentration of a chemical(s) are judged to be toxic to aquatic life. The source of the toxin may be attributed to urban runoff requiring a particular choice of the best management practice.

Two important sources of data are the Bay Protection Toxic Cleanup Program [15] and the *Ecological Assessment of San Diego Bay* [16]. Data for the latter report was compiled from the 1998 Southern California Regional Monitoring Project.

Data from the above two sources plus other sources have identified water bodies in San Diego Bay that are impaired because they exceed any one, a combination or all of pollutants/environmental stressors such as bacteria indicators, water chemistry, chemical concentration in the sediment, sediment toxicity, and degraded benthic community.

The Environmental Protection Agency requires under the Clean Water Act Section 303(d) on a biennial basis to provide listings of these impaired water bodies. The latest 303(d) listing for San Diego Bay was issued in 2002 [16]. There are 16 impaired water bodies listed for San Diego Bay. Impaired water bodies

nearby the Project include the shoreline in the vicinity of B Street and the Broadway Pier, the shoreline at the G Street Pier, and the shoreline at the Downtown Anchorage. These impaired water bodies are classified as Environmentally Sensitive Areas in the Municipal Separate Storm Sewer Systems (MS4) Permit and deserve special attention. Section F1.b (2) (a) vii of the permit states:

Environmentally Sensitive Areas: All development and redevelopment located within or directly adjacent to or discharging directly to an environmentally sensitive area (where discharges from the development will enter the receiving waters within the environmentally sensitive area), which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of impervious surface on a proposed project site to 10% or more of its naturally occurring condition. Environmentally Sensitive areas include but not limited to all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994); water bodies designated with the Rare Beneficial use by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994) and its amendments), areas designated as preserves or their equivalent under the Multi Species Conservation Program within the Cities of the County of San Diego; and any other equivalent environmentally sensitive areas which have been identified by the Copermitees. "Directly adjacent" means situated within 200 feet of the environmentally sensitive area. "Discharging directly to" means outflow from the drainage conveyance from the subject development or redevelopment site, and not commingled with flows from adjacent lands.

Since the project will discharge into the San Diego Bay, it imperative that an evaluation of its impact on water quality be evaluated and potential mitigation measures identified as part of an SEIR.

## 5. Geology and Seismicity: 1990 Data Obsolete

Geological and Seismic studies for the 1990 Navy Broadway Complex Redevelopment Project EIR were performed by Woodward-Clyde Consultants (1990 EIR, Appendix 8c Ref. 17). These data are no longer valid, because it does not fully comply with new Federal and State laws and regulations and has been superseded by current knowledge of significant seismic faults in the vicinity of the Navy Broadway Complex project identified by more recent, more sophisticated technological studies. The 1995 City of San Diego Seismic Safety Study designated the whole of downtown a special seismic zone that requires site-specific fault investigations for proposed redevelopment projects.

The Manis memorandum completely ignores these facts, which mandate the need for an SEIR regardless of any other considerations.

## Scientific Studies of San Diego Earthquake Faults

Due to advancements in seismic testing technology, and our understanding of the science of engineering, standard geological testing practice requires that

geotechnical investigations cannot be relied upon after three years or more. Therefore, an update to the original geotechnical investigation done in 1990 is required.

Changes in legally required standard geotechnical testing practices since 1990 include response spectra analysis, underwater fault investigations - using high resolution seismic reflection surveys as was done as part of the 1997 OFR-97-10b study, and the use of stone columns. Equations for liquefaction analysis have also changed.

Many active fault zones have been discovered in downtown San Diego on land and in the bay since 1990, prompting development of the original Point Loma Quadrangle Alquist-Priolo map of the mid-1990s, which was superseded by the revised Alquist-Priolo map of 2003.

California Geological Survey published reports on the reclassification of the Rose Canyon Fault zone including the following:

1. *Open File Report 93-02 (OFR 93-02). The Rose Canyon Fault Zone, San Diego County and adjacent offshore area, Southern California, 1993.*
2. *Open File Report 97-10b (OFR 97-10b). Age of Faulting in San Diego Bay in the Vicinity of the Coronado Bridge, An Addendum to Analysis of Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge, 1997.*
3. *Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge. California Geology: 55:4-17, dated 2001, Michael P. Kennedy and Samuel H. Clarke, Jr. (see [http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California Geology 7801 CG San Diego Bay.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California%20Geology%207801%20CG%20San%20Diego%20Bay.pdf)).*

A substantial change in circumstances, that was not reflected in the original EIR, is the change in the status of the Rose Canyon Fault Zone from an inactive to an active status in the mid-1990s. Based on the active status designation and the 1995 City of San Diego Seismic Safety Study, site-specific fault investigations are required for all proposed redevelopment projects throughout all of downtown. Also, in the mid-1990s, downtown San Diego was re-designated to UBC Seismic Zone 4, the highest zone of ground shaking hazard, from Seismic Zone 3.

The area under the Navy Broadway Complex is underlain by undocumented hydraulic fill associated with the dredging of San Diego Bay (see Fig. 1, Appendix 1). The area was either underwater or partially underwater; that is why the property falls under the jurisdiction of the Port District and the California Coastal Commission. In downtown San Diego, the area west of the train tracks generally consists of undocumented hydraulic fill over bay deposits (mud), and over the old Bay Point Garbage Dump Formation.

Typically fault investigations can be excavated with a backhoe extending into formational soils. Due to the depth to the Bay Point Formation (at 20 feet) and the water table at 8 feet below grade, normal fault investigation techniques cannot be used. Specialized fault investigation techniques, such as high resolution seismic

reflection surveys, are needed. A site-specific fault investigation extending below the water table into the Bay Point Formation must be conducted to rule out the presence of an undocumented active fault line. Only a very limited trenching in the upper layers of the hydraulic fill as part of the original archeological survey done for the 1990 EIR but no fault investigation was ever conducted in on site.

In response to the 1997 OFR 97-10b study, the Alquist-Priolo map for the Point Loma Quadrangle had to be revised to show the newly discovered active fault lines under San Diego Bay (see Fig. 2 Appendix 1).

The area under the Navy Broadway Complex is very close to the active fault zone. The parcels are also on the same directional vector as the active fault line in San Diego bay with no known northern boundary except that the legend says:

**"query (?) indicates additional uncertainty."**

Figure 3 (Appendix 1) is the fault location map from the 2001 California Geology article. Note that the Coronado fault has been extending to the edge of the Port District property directly south and within hundreds of feet of the Navy Broadway Complex. Excerpts regarding the Coronado Fault of the Rose Canyon Fault Zone from the 2001 article include the following:

**"The location of the fault farther to the north is unknown but, based on a projection along strike to the north, it may intersect or joint the Old Town segment of the Rose Canyon Fault... The Coronado Fault cuts material at or very near the bay floor and is considered to be one of the most youthful faults in this part of the Rose Canyon Fault Zone."**

Another change is the adoption of the 1995 City of San Diego Seismic Safety Study that designates the whole of downtown a special seismic zone, which requires site specific fault investigations for all proposed development projects. The original 1990 EIR/EIS was based on the 1982 City of San Diego Seismic Safety Study conducted by Leighton and Associates. The possible presence of an underwater active fault line beneath the Navy Broadway Complex was anticipated at the time the EIR was certified complete, but at that time the City did not require fault investigations.

Since 1995, fault investigation are required in downtown as can be seen the Chapter 5.5, Geology and Seismicity of the Draft Downtown Community Plan Final EIR, Dated March 2006:

[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown FEIR Seismic Geology Impacts.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown%20FEIR%20Seismic%20Geology%20Impacts.pdf).

Fig. 4 (Appendix 1) - Geologic Formations and Faults, and Fig. 5 (Appendix 1)- Geologic Hazards are taken from the 2005 Draft Downtown Community Plan EIR. Please note that the Coronado Fault is considered active.

These maps need to be changed and updated to show portions of the Coronado fault as being active and in the updated Alquist-Priolo earthquake fault zone.



Fig. 6 (Appendix 1) shows excerpts from the 1990 EIR/EIS for the Navy Broadway Complex. The EIR inaccurately assumes that no fault underlies the site, and that the closest active fault is located 0.5 to 1.0 miles away, assumptions that were based on the 1985 report for the Police Administration and Technical Center located at Broadway and 14th Street.

As stated above, several new active faults as close as a few hundred feet away have been discovered in downtown San Diego, San Diego Bay, and are trending towards the Navy Broadway Complex site.

During the CCDC meeting of October 25, 2006  
<http://www.ccdc.com/events/resources/10.25.06.Agenda%20Special.Corrected.635.pdf> the City Development Services Department (DSD) staff acknowledge the lack of a fault investigation on site. They told the CCDC board that the developer would have to conduct a fault investigation as part of their "due diligence." The City DSD staff said the time for a fault investigation was "before permits are issued."

This statement by the City DSD implies that a fault investigation is not needed as part of the CEQA documentation process. Fault investigations in active earthquake fault zones such as downtown are required by CEQA law.

Due to the close proximity of active faults in the area (@ 200 feet) that are trending towards the site, a fault investigation is required as part of any EIR/EIS in downtown. Based on this fact alone, a CEQA consistency determination cannot be made by City of San Diego staff or adopted by the CCDC board or the City Council.

Also, due to the low water table and the possible presence of loose sand, the undocumented hydraulic fill under the Navy Broadway Complex may be subject to liquefaction in the event of an earthquake.

The liquefaction analysis cannot be verified because no borings logs or boring location maps were included in the 1990 EIR/EIS or the geotechnical report entitled, "Additional Geologic, Seismic and Geotechnical Studies - Navy Broadway Complex," dated September 5, 1990, by Woodward-Clyde Consultants [17]. A new liquefaction analysis using the updated equation and the correct fault parameters is required by current law.

Heavy, brittle, Un-reinforced Masonry (URM) buildings are prone to collapse and failure during earthquakes. The collapse of URM buildings, resulting in exposing people or structures to substantial risk or injury or loss of life, or destruction of property caused by seismic or geologic hazards must be avoided at all costs. The 1986 California Un-reinforced Masonry (URM) Building law called for inventory and mitigation plan for all pre-1946 un-reinforced masonry buildings located in the UBC Seismic Zone 4. When the law was passed, the city of San Diego was not considered to be in Zone 4 (ICBO, 1985). Since then, San Diego has been added to Zone 4 and has now voluntarily adopted a URM loss reduction program (ICBO, 1997). Due to the change from Seismic Zone 3 to Zone 4, several hundred buildings in San Diego had to either

be demolished or seismically upgraded to withstand potential earthquakes. Because of the very high costs associated with seismic upgrades, hundreds of buildings in downtown San Diego were torn down and replaced with denser, high-rise structures. This change in density at build out, due to a reclassification of the Rose Canyon Fault Zone, was not anticipated at the time the 1990 EIR was completed and certified.

The necessary SEIR must include technical appendices including a site-specific geotechnical investigation including seismic parameters, and a fault investigation, and updated liquefaction analysis in accordance with the Land Development Code.

The Developer delivered the final submittal packages for the Master Plan and Navy Buildings on June 30, 2006. If the submittal package contained a new geotechnical investigation, then this new information must be included in the Soil/Geology/Seismicity Section of the SEIR as required by law. If a new geotechnical investigation has not been conducted, one must be done as part of the SEIR on this project proposal.

## 6. Public Safety

### Police Protection/Law enforcement

There has been a substantial change in the city-wide staffing levels of San Diego Police Department (SDPD) in the sixteen years between 1990 and 2006. As a result of the city's financial crisis, rank-and-file police officers' pay has not increased in recent years and may have fallen in real terms. Salaries and uncertainty of pension and health benefits has contributed to a decreased morale at SDPD and an increased attrition rate of officers. In addition, a significant portion of senior officers have retired taking advantage of the Deferred Retirement Option (DROP) Program. As a result, the number of sworn police officers working for the SDPD currently is substantially below the generally accepted ideal level of two officers per 1,000 residents. In 2005, the officer to population ratio was 1.55 city-wide [10].

In addition, population growth and increased residential, commercial, industrial, and institutional uses downtown has resulted in increased demand for law enforcement services, equipment and training.

Consequently, there is a substantial change in circumstances in police protection city-wide and downtown since the 1990 Navy Broadway Complex EIR was certified.

The 1990 EIR states that the SDPD Central Division was staffed with a captain, four patrol lieutenants, 16 sergeants, 140 officers and 25 detectives [2]. Fifty-nine patrol cars were assigned to the Central Division. At that time, the Central Division served a population of over 67,000 residents of whom only a few thousand lived downtown and it was deemed that the SDPD was adequately staffed to provide police protection to the project region and vicinity.

The environmental consequences of the Navy Broadway Complex project were stated to be an increase in vehicular traffic leading to a greater risk of traffic accidents, an increase in car prowls of parked vehicles. However, it was concluded the SDPD had sufficient police facilities, manpower and equipment to meet the increased demand caused by the project. Because no significant adverse effects were expected no mitigation measures were proposed [2].

Since 1990 the downtown residential population has grown to 27,000 as of August 2004 and is projected to be 89,100 at build-out exacerbating the shortage of police officers and equipment to patrol downtown. To reach the ratio of two officers per 1,000 residents would require an additional 83 officers to serve the downtown area (520 service area) [10]. To move towards the goal of a ratio of two officers per 1,000 residents city-wide, the SDPD requested the addition of 57 officers. However, the addition of 57 officers city-wide would not be sufficient to meet the current demand for law enforcement downtown. Even if all the officers were assigned to the downtown area, downtown would require an additional 48 officers to meet the goal service ratio [10].

The most recent Navy Broadway Complex plan proposed by Manchester Financial Group is almost three million gross square feet of above grade improvements creating over 3,000 jobs. In addition, the plan calls for 1,475 hotel rooms whose occupants would also contribute to an increased demand for law enforcement services. The 1990 Navy Broadway Complex EIR did not, and could not, analyze the impact of the project on the delivery of law enforcement services downtown at a time when the SDPD is seriously undermanned.

This makes a SEIR even more necessary since mitigation may be required for the impact the development of the Navy Broadway Complex would have on the need for additional SDPD officers and equipment.

### Fire Protection/Emergency Medical

In the 2006 Downtown Community Plan EIR [10] it is stated that:

" Under the per capita standards currently used by the Fire Department, implementation of the Proposed Plans and Ordinances would require an additional 56 fire personnel".

" Increased traffic congestion as a result of growth downtown would hinder timely responses to emergency calls. The run volume for the downtown response units has already increased with the current level of growth in the downtown area. In addition, the increase in the number of high rises (particularly residential) would result in an increase in medical aids and a decreased ability to respond to other emergencies".

These assessments do not replace the need for similar studies to be included in a project-specific SEIR. However, they are useful to indicate how obsolete the Fire Protection section in the original 1990 EIR is as it states:

" The existing facilities, manpower and equipment at the City and Federal fire departments are adequate to maintain a sufficient level of fire protection to the project site.... Therefore, no significant impacts to fire protection services are anticipated..... No mitigation measures are required".

Clearly these statements do not reflect the current situation as, in addition to the statements taken from the downtown community plan EIR cited there is also a need for two more fire stations for which funding is not currently available [9].

### Consequences on Public Safety of the War on Terror

Since the terrorist attack on the World Trade Center on September 11, 2001 (9/11) and the subsequent ongoing war on terror launched by President George W. Bush the risks of attack of domestic USA military installations has increased substantially. This situation that could not have been foreseen when the 1990 Navy Broadway EIR was certified and raises the important question of the impact on civilians of building a military installation in the center of a busy metropolis.

This issue has been raised by Assembly member Lori Saldaña in a letter supporting the need for a project-specific SEIR for the redevelopment of Navy Broadway Complex,

In her letter Assembly member Saldaña expresses: her concerns about the advisability of siting the new Headquarters of the Navy Region Southwest on the Navy Broadway Complex property. She believes "a high-rise military facility in a highly populated urban setting could pose a risk to downtown residents, tourists and workers" post-9/11. She also points out that then Captain Len Hering, Commander of Naval Base San Diego gave Testimony at a Congressional hearing in June of 2001 expressing the same view. In part he said:

"Nobody wants to believe that something like Khobar Towers or the U.S.S. Cole could possibly happen in America's finest city; and more importantly, not on a military facility. We all know that is not true... I have come to realize those risks can no longer be taken."

A few months later his concerns were shown to be well-founded with the tragedy of 9/11.

The rise of urban terrorism in the USA and the war on terror represent changed circumstances that could not of been predicted in 1990. Consequently, a project-specific SEIR is required to analyze the impact of these changed circumstances on public safety if a new Navy Headquarters is built on the Navy Broadway Complex site.

## 7. Impact on Parks

The impact of the Manchester Financial Group redevelopment plan for the Navy Broadway Complex has a significant effect on whether the current deficit in downtown parks can be corrected in the future.

Intensification of downtown and particularly development on the waterfront is only acceptable if adequate infrastructure, public facilities and promised amenities are provided concurrent with growth to ensure that the quality of life downtown will be not only maintained but enhanced. Parks were a major deficiency in downtown when the 1990 EIR was certified, and remain so currently and in the future as envisioned in the 2005 Downtown Community Plan Update.

This was made clear in a June 2005 letter from the Parks and Recreation Department and provided to both CCDC and the City Council. Existing General Plan Standards (not goals), for population-based parks (Neighborhood and Community Parks) is a range of 2.8 to 4.0 acres per 1000 residents. In the past, this range has often been replaced by staff from Planning and Development Services with a figure of 2.8 acres per 1000 residents and it is unclear what their authorization was to do so. The Planning Department sometimes uses a further reduced standard of 2/4 acres with unclear legal authority to do so.

The Park and Recreation Department in their 9/12/05 letter to CCDC, concludes that Downtown would need 249.5 acres of parks for the proposed nearly 90,000 residents using the 2.8 acres per 1000 residents. Using the upper figure of 4 acres per 1000, 360 acres would be needed. There is good reason to use the higher figure because downtown and particularly the waterfront portion is utilized heavily by people who do not reside there. Consider the following:

- Annual convention delegates currently nearly 500,000
- Annual baseball attendance this year, nearly 3,000,000
- Annual visitors to the Midway, estimated at 500,000 but exceeding expectations
- Annual cruise ship visitors in 2005: 517,529 and it has just been announced that Carnival will base a ship here permanently
- With the construction of a new cruise ship terminal by the Port, we can expect a drastic increase in these numbers
- Thousands of office workers seeking recreation opportunities during lunch and after work

The above statistics represent significantly changed conditions from the 1990 EIR which did not anticipate the downtown ballpark, the expansion of the convention center, turning over Navy pier to the Midway Museum, and the expansion of the cruise ship industry.

While the Development Services consistency analysis relies on the Downtown Plan Update EIR this EIR does not include an update for the Marina area, which has a significant park deficit. In reviewing both the existing and proposed parks in downtown we find the following:

A total of 78.9 acres of existing parks is asserted to be publicly available. However, one has to question the definition of parks in this list. It counts San Diego High School Recreational Fields for 21.3 acres. Clearly this area is not available to the public at all times and in fact is available for very limited use. The County Administration Center Open Space is 6 acres inclusive of parking lots. The City College outdoor area is counted as 4 acres but it is not available for public use during school sessions. The Convention Center Park is hidden behind the Center and is difficult for the public to access.

We find an additional 61.5 acres in proposed future parks, which include 8.8 acres at the CAC, which may or may not happen and is mostly passive use. The status of future parks is unclear because the City of San Diego has not collected fees in the past and current park fees are inadequate to fund future parks.

The existing and planned parks discussed above comprise 140.4 acres - far from the required standards set forth in the general plan. In fact it amounts to about 1.6 acres per thousand and that is being generous by accepting the spaces, which are inappropriately counted as parks.

San Diego's waterfront is a magnet to residents, workers, downtown visitors, tourists, and events. They want, need and should be able to have ample access to their bay, to see and reach the water. Since the 1990 EIR was prepared, much has changed including the need to jump start the downtown economy with hotel and office on this bayfront site. The economy downtown is vibrant but there is a real unmet need for more parks, open space, bay views and waterfront access. In light of this unmet need there has recently been considerable expression of public sentiment that all, or a large portion, of the Navy Broadway Complex site be used for parkland and other civic uses.

The park deficit in downtown, particularly along the waterfront is critical and this is the best use of the site under current circumstances, and they have changed since 1990 and have not been adequately addressed in subsequent EIR's.

There may be other views than those expressed above but because the Mayor has sought to short circuit public discussion for whatever reason, there will be no public debate in violation of CEQA law if the City Council allows him to exceed his authority. An SEIR is required by law to provide decision makers and the public the information they require to make an informed decision on whether parkland at the Navy Broadway Complex site is preferable to the proposed Manchester Financial redevelopment plan balancing economic and quality of life consequences of different projects.

## 8. Financial Impacts are Impossible to Analyze for lack of Data

The 1990 EIR included a section on the Fiscal Impact of the Project (Appendix 8C, pp 4-139 to 4-143). A Fiscal Impact Report was prepared by Williams-Kuebelbeck & Associates and made available to the public:

A fiscal impact report was prepared for the proposed alternatives and is on file at the Broadway Complex Office, 555 West Beech Street, Suite 101, San Diego, California, 92101-2937. Provided below is a summary of the report's conclusions.

Despite this, the Navy has denied a request dated September 26, 2006 to obtain this document under the Freedom of Information Act citing confidentially. However, it is clear from the selected information from this report in the 1990 EIR that its findings are outdated and not applicable today. The projected annual tax revenues to the City of San Diego at Project Buildout are the key data. However, property tax estimates were based on project buildout in 2003 and retail and transient occupancy tax revenues based on project stabilized occupancy in 2005.

A similar financial impact report may have been prepared for the development of the Navy Broadway Complex site by Basile, Baumann Prost & Associates, Inc in 2005/2006. However, since the Navy has not even confirmed that this document exists, the outdated fiscal impact data incorporated into the 1990 EIR are the only public information.

Yet another study is said to have been conducted by Keyser Marston to establish an estimated value for land on the Navy Broadway Complex site as part of negotiations between the Mayor's office and MFG over a concept that includes the city subleasing block 2A back from MFG to preserve that land as public parkland. This study has also not been released for public review.

No studies have been conducted since 1990 looking at the impact that building 2.9 million square feet of new commercial and retail space on the Navy Broadway Complex site will have on the economy of the rest of downtown. During public input workshops held last summer by CCDC on this project proposals, merchants from Horton Plaza testified that over time, more of that shopping centers clientele have been cruise ship tourists, and warned that going ahead with the MFG proposal could severely hurt their future business. It is concluded that the lack of current fiscal impact data related to this project proposal is sufficient to trigger an SEIR.

#### 9. **The Manchester Project not a Stable Project and not legally sufficient for an EIR under CEQA Law**

CEQA Section 15124 states that an accurate, stable, finite project description is essential for an informative and legally sufficient EIR under CEQA (see below). The Manchester project for the Navy Broadway Complex fails this test. Sec. 15124 is reproduced in full below:

##### 15124. Project Description

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

- (a) The precise location and boundaries of the proposed project shall be shown on

a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the Lead Agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21165, 21166, and 21167.2, Public Resources Code; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

Discussion: This section requires the EIR to describe the proposed project in a way that will be meaningful to the public, to the other reviewing agencies, and to the decision-makers. Although the statute contains no express requirement for an EIR to contain a project description, the statutory points of analysis need to be supplemented with a project description for the analysis to make sense. This section is a codification of the ruling in *County of Inyo v. City of Los Angeles*, cited in the note. There the court noted that an accurate description of the project has been required by case law interpreting the National Environmental Policy Act. The state court of appeal declared that an accurate, stable, finite project description is an essential element of an informative and legally sufficient EIR under CEQA.

Subsection (b) emphasizes the importance of a clearly written statement of objectives. Compatibility with project objectives is one of the criteria for selecting a reasonable range of project alternatives. Clear project objectives simplify the selection process by providing a standard against which to measure possible alternatives.



Subsection (d) calls for a brief statement of how the Lead Agency and any Responsible Agencies will use the EIR in their approval or permitting processes. This is necessary to make the EIR fit the Lead Agency concept which requires all permitting agencies to use the same EIR. In addition, it encourages the lead agency to consult with other agencies and to integrate CEQA review with other related environmental reviews. This advances Public Resources Code section 21003 which provides that, to the extent possible, CEQA is to be applied concurrently with other review processes.

It is well-documented that the Navy Broadway Complex project proposed by Manchester Financial group has undergone multiple iterations since it was proposed earlier this year. On March 31, 2006, Manchester Financial Group was selected as the developer by the Navy. The first conceptual plans for the project were presented at public meetings in April. However, the conceptual plan was then modified to a higher density project presented to the CCDC Board on May 24, 2006. A fourth modification of the plan was delivered by the developer to CCDC on June 30, 2006 with reduced density in the final submittal packages for the Master Plan and the Navy Building. This version of the plan was supposed to be the final conceptual plan upon which an EIR consistency finding was to be based. No Development or Construction drawings for the project were submitted in the package to be evaluated.

More importantly, the developer changed the traditional hotels proposed for the project to condominium ownership hotels before the Manis memorandum was made public on October 19, 2006. This change has a profound effect on the environmental impact of the project and was never presented to the public. Further, the fiscal impact of condo-hotels versus hotels has never been discussed. The California Coastal Commission has described this modification of the project as "a significant change" that may adversely to scenic amenities of the waterfront and coastal access opportunities [8].

Another important unsettled aspect of the proposed project is that there are ongoing negotiations, that the City Council are not privy to, between the Mayor's office and the developer to purchase lease rights to a one acre parcel of the Navy Broadway Complex site known as 2A for 20 million dollars. The tract is contiguous with the proposed 1.4 acre park at the corner of Broadway and Harbor Drive and the Mayor's office has proposed using the 2A parcel to expand the size of the park. However, this was the proposed site of the Museum required by the 1992 Agreement so that there would be a negative impact on the cultural value of the project. In addition, the proposed source of funds was indicated by Mr James T. Waring, Deputy Chief of Land Use and Economic Development speaking on behalf of the mayor to be CCDC's park fund. This admission raises concerns about the impact of this real estate deal on the future development of badly needed new parks in other parts of downtown.

In summary, the vagueness and lack of detail of the Manchester Financial Group's proposed development of the Navy Broadway Complex site and the unsettled issues of condominium owner hotels and purchase of the 2A parcel by the city does not conform to CEQA law. Clearly the plans for the redevelopment of the Navy Broadway Complex fail to describe an accurate, stable, finite project

that is an essential element of an informative and legally sufficient EIR under CEQA.

#### 10. Public Participation is an Essential Part of the CEQA Process

CEQA Title 14. California Code of Regulations  
Chapter 3. Guidelines for Implementation of the California Environmental  
Quality Act

Article 13. Review and Evaluation of EIRs and Negative Declarations  
Section 15201 states that "public participation is an essential part of the CEQA process" and is supported by case law and the authorities cited in Sec 15201. DSD has completely ignored the requirement for public participation in their finding that the 1990 EIR for the Navy Broadway Complex is sufficient. Under CEQA Section 21166 the fact that the 1990 EIR was completed 16 years ago and the data for the EIR is of an even older vintage represents "a substantial change with respect to the circumstances under which the project is being undertaken".

There has been no public participation in the process of issuing an EIR for Navy Broadway Complex for more than sixteen years. None of the programmatic EIRs cited by DSD as updating the 1990 project EIR for Navy Broadway Complex noticed the public that they should comment on the Navy Broadway Complex project EIR. The consequence of that is an entire generation of current voters have been disenfranchised and their voices have not been heard with regard to the environmental impact of the Navy Broadway Complex development project. In addition, there has been a substantial influx of newcomers of San Diego since 1990 that have had no opportunity to comment on the environmental impact of the project.

This finding alone is sufficient to invalidate DSD's assertion that a subsequent EIR is not required for the Navy Broadway Complex project.

## References

1. Robert Manis (October 19, 2006) CEQA Consistency Analysis for Navy Broadway Complex, Memo to James T. Waring, Deputy Chief of Land Use and Economic Development.
2. City of San Diego Final Environmental Impact Report Navy Broadway Complex October 1990.
3. SOFAR Document (August, 2006) Complete Downtown Community Transportation Plan prepared by Smart Mobility Inc.
4. House Report 107-333-National Defense Authorization Act for Fiscal Year 2002, CONFERENCE REPORT (SEC. 2843).
5. CEQA Title 14, California Code of Regulations Chapter 3 Article 11: TYPES OF EIRs. Sec. 15160-15170.
6. Letter from Assembly member Lori Saldana to Ms. Jennifer LeSar, Chair CCDC Board of Directors dated October 25, 2006.
7. Letter to the Board of Directors CCDC dated October 3, 2006 from Shute, Mihaly & Weinberger LLP on behalf of SOFAR
8. California Coastal Commission letter dated October 25, 2006 to Rear Admiral Len Hering, Commander Navy Region Southwest.
9. Downtown Community Plan (June 2005).
10. Downtown Community Plan EIR (January 2006)
11. Environmental Protection Agency, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 40CFR Part 131, Federal Register Vol. 65 No. 97, Thursday, May 8, 2000. available at <http://www.epa.gov/waterscience/standards/ctrindex.html>
12. State Water Resources Control Board, California Environmental Protection Agency, Policy for the Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, 2005 <http://www.swrcb.ca.gov/iswp/docs/final.pdf>

13. California Regional Water Quality Control Board San Diego Region, Order No. 2001-01, NPDES No. CA0108758, Waste Discharge Requirements for Discharges of Urban Runoff From Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, The Incorporated Cities of San Diego County, and The San Diego Unified Port District. February 21, 2001, see <http://www.waterboards.ca.gov/sandiego/programs/stormwater/sd%20permit/Order%20No.%202001-01%20Final%20with%20attachmentss.pdf>.
14. State Water Resources Control Board, Non-Point Source Pollution Control Program.  
<http://www.waterboards.ca.gov/nps/protecting.html>.
15. State Water Resources Control Board, National Oceanic and Atmospheric Administration, California Dept. of Fish and Game, Marine Pollution Laboratory, Moss Landing Marine Laboratories, and University of California, Santa Cruz, Chemistry Toxicity and Benthic Community Conditions in Sediments of the San Diego Bay Region, September 1996.  
<http://www.waterboards.ca.gov/bptcp/docs/reg9report.pdf>
16. City of San Diego Metropolitan Wastewater Department, Ecological Assessment of San Diego Bay, a Component of the Bight '98 Regional Survey, December 2003. Report available at <http://www.swrcb.ca.gov/rwgcb9/programs/baycleanup.html>
17. Manchester Pacific Gateway Master Plan dated August 17, 2006.

## Acknowledgements

This document is the product of many Broadway Complex Coalition members and other interested members of the public. In particular, we thank Ed Kimura for sharing his expertise on water quality issues and drafting Section 4 of this Appeal. We also thank Katheryn Rhodes for sharing her expertise on Geology and Seismicity and drafting Section 5 of this Appeal. Her work can be seen in more detail at [http://www.laplayaheritage.com/Katheryn's\\_Stuff.htm](http://www.laplayaheritage.com/Katheryn's_Stuff.htm)

## Appendix 1

Figures 1-5 for Section 5

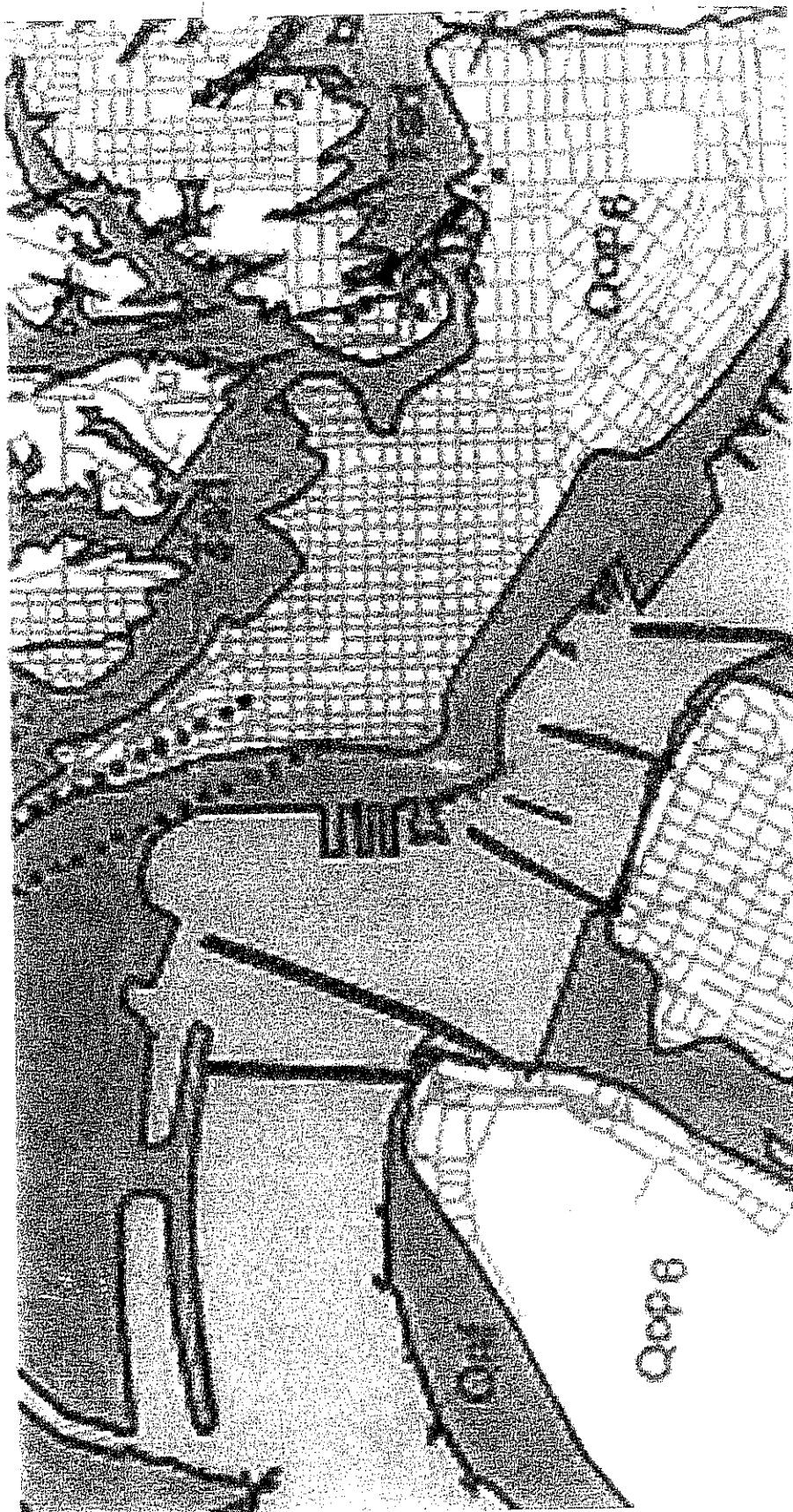


Figure 1 – Portion of the Geologic Map of the San Diego 30' x 60' Quadrangle, California, United States Geologic Survey, 2005.  
[http://www.laplavaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego\\_map2\\_at9.pdf](http://www.laplavaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego_map2_at9.pdf)  
 The dark brown areas (Qaf) are underlain by undocumented hydraulic fill.

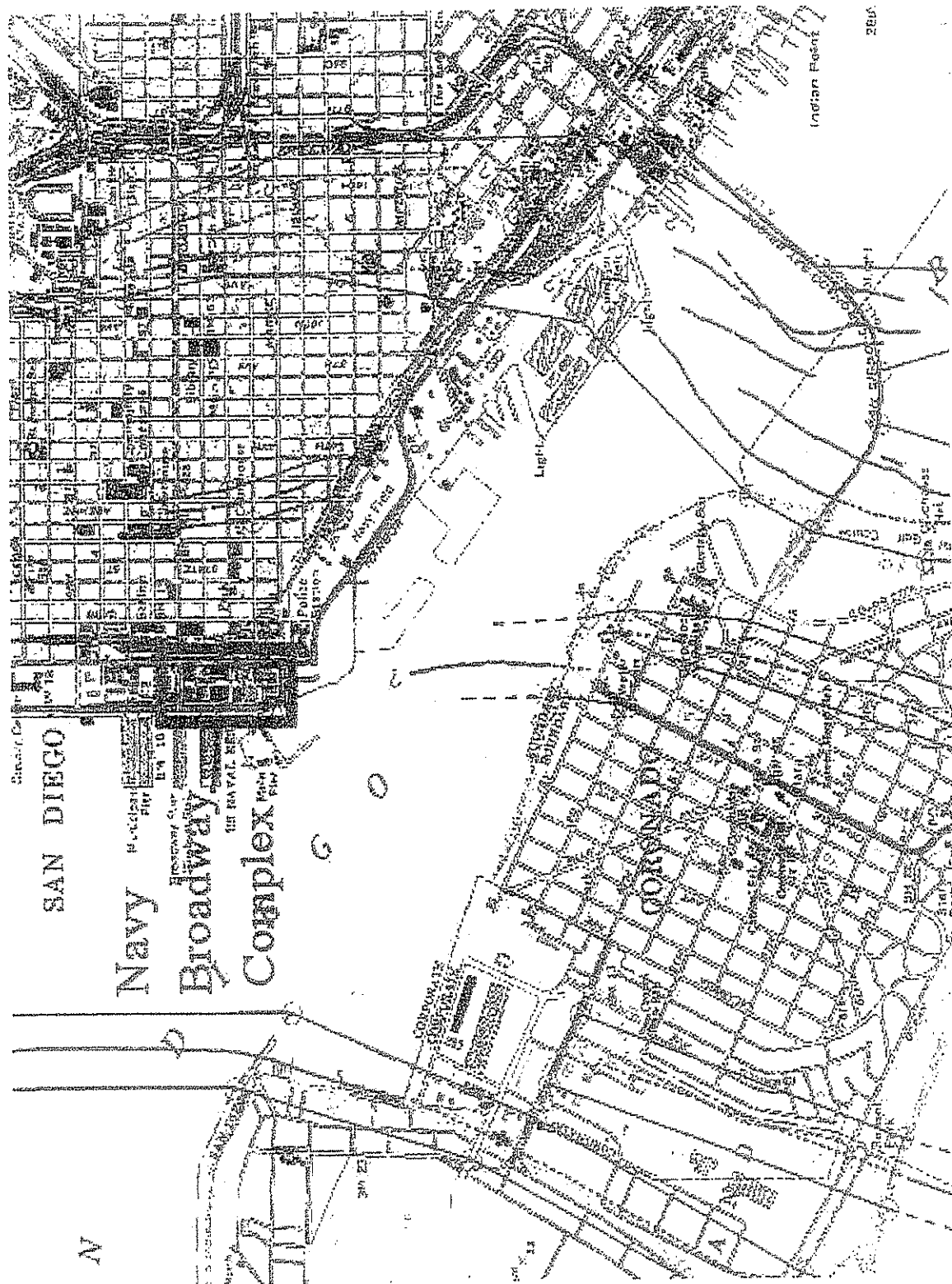


Figure 2 – Alquist-Priolo Earthquake Fault Zone, Point Loma Quadrangle, California Geological Survey, Revised Official Map, Effective May 1, 2003. [http://www.laplayaheritage.com/La%20Playa/point\\_loma%20Quadr%20AP%20Zone.pdf](http://www.laplayaheritage.com/La%20Playa/point_loma%20Quadr%20AP%20Zone.pdf)

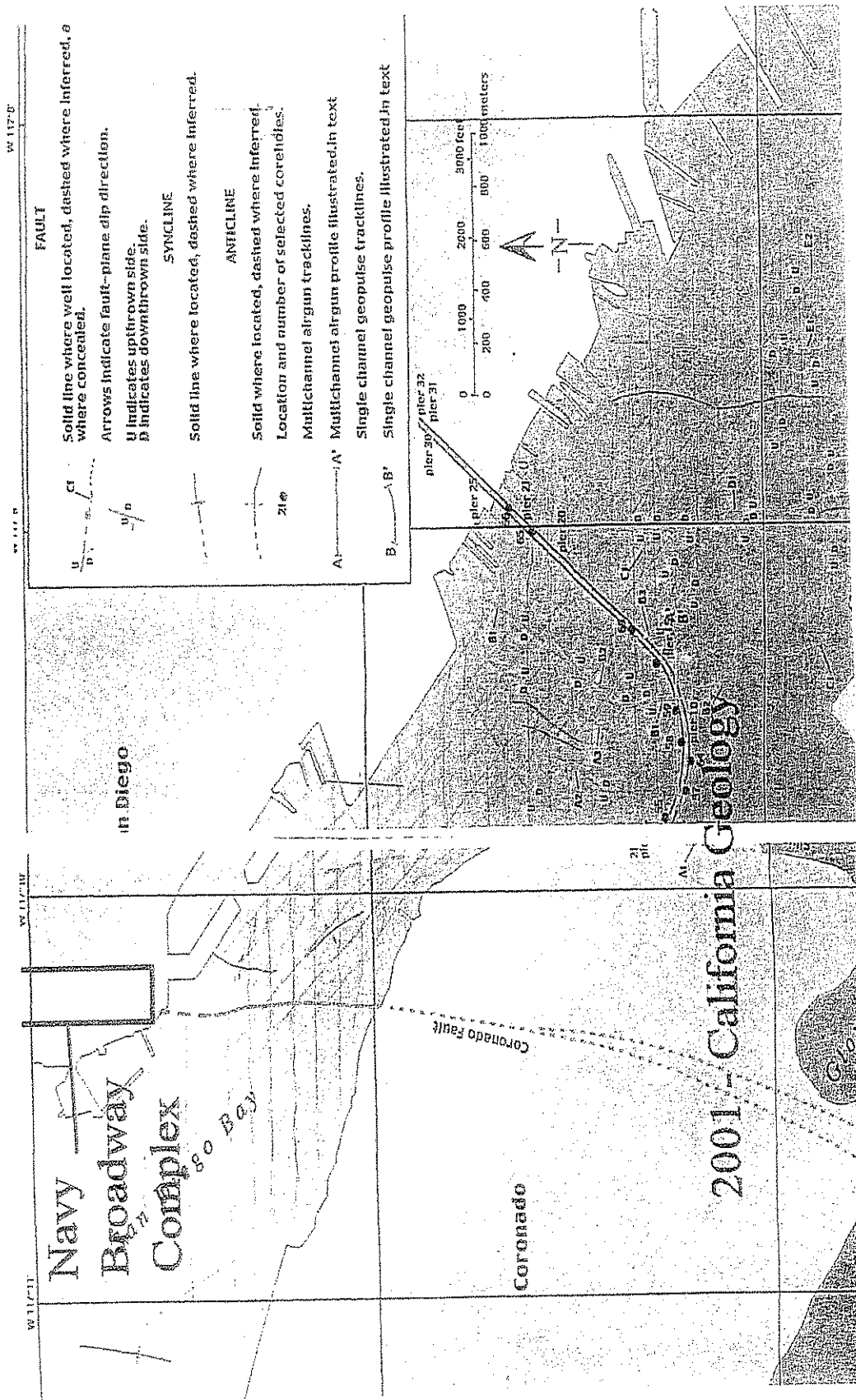
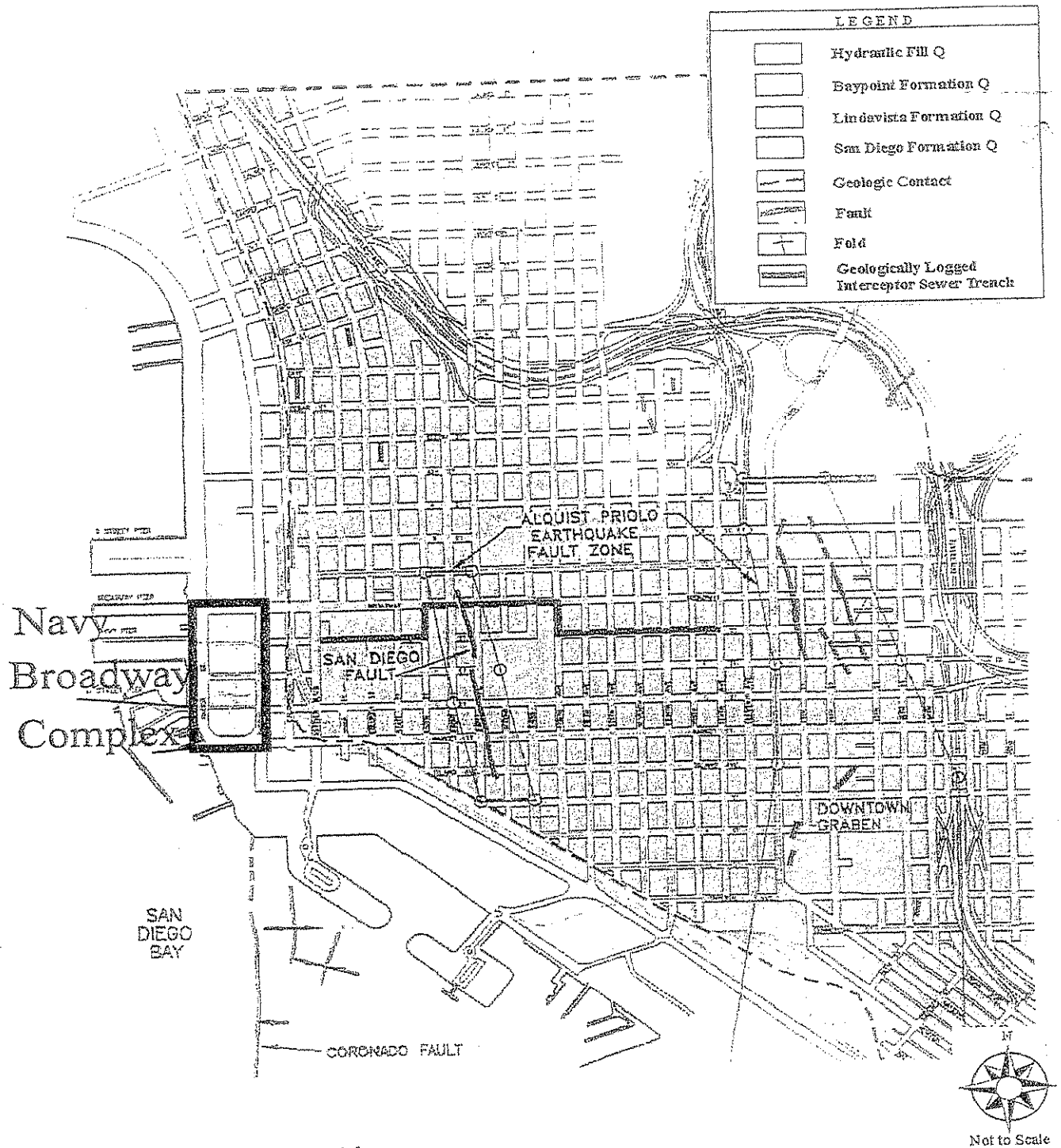


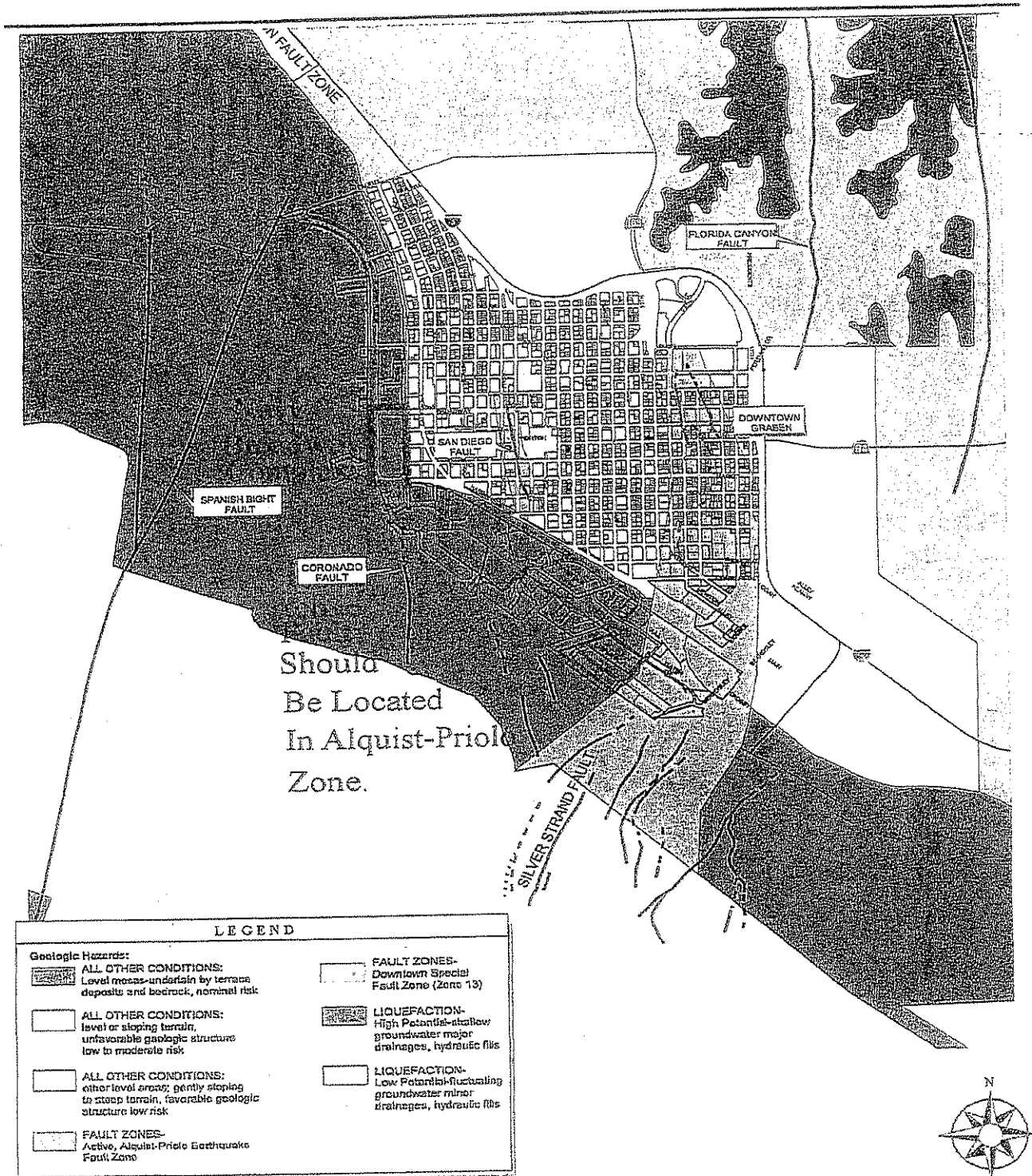
Figure 3 - Map showing the location of faults, folds, core holes, geophysical tracklines and pier pilings, Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge. California Geology: 55:4-17, dated 2001. The active Coronado Fault has been extended in the Bay to the edge of the Port Land [http://www.laplavaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California Geology 7801 CG San Diego Bay.pdf](http://www.laplavaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California%20Geology%207801%20CG%20San%20Diego%20Bay.pdf).





Source: URS, 10/16/2002, City of San Diego Seismic Safety Study, 1995 and CIDMG 1996

Figure 4 - Geologic Formations and Faults, Figure 5.5-1 from the Draft EIR for the Downtown Community Plan, March 2006. Please note that the Coronado Fault of the Rose Canyon Fault Zone is considered active. This map needs to be changed to show portions of the Coronado Fault as being active and in the Alquist-Priolo earthquake fault zone.



Source: URS, Downtown Community Plan, 10/16/2003

Figure 5 - Geologic Hazards Figure 5.5-2 from the Draft EIR for the Downtown Community Plan, March 2006. Please note that the Coronado Fault is considered active. This map needs to be changed to show portions of the Coronado fault of the Rose Canyon Fault Zone as being active and in the Alquist-Priolo earthquake fault zone.

## Appendix 2

Letters of Support from:

1. Assembly Member Lori Saldaña
2. UNITE HERE Local 30
3. Sierra Club, San Diego Chapter
4. San Diego Audubon Society
5. Friends of San Diego
6. Public Trust Alliance

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0076  
(916) 319-2076  
FAX (916) 319-2176

DISTRICT OFFICE  
1557 COLUMBIA STREET  
SAN DIEGO, CA 92101  
(619) 645-3090  
FAX (619) 645-3094

Assembly  
California Legislature



LORI SALDAÑA  
ASSISTANT MAJORITY WHIP  
ASSEMBLY MEMBER, SEVENTY-SIXTH DISTRICT

COMMITTEES:  
APPROPRIATIONS  
NATURAL RESOURCES  
VETERANS AFFAIRS  
WATER, PARKS AND WILDLIFE

SUBCOMMITTEES:  
CHAIR, BASE CLOSURE AND  
REDEVELOPMENT

SELECT COMMITTEES:  
CHAIR, BIOETHICS, MEDICINE  
AND TECHNOLOGY

October 26, 2006

Council President Scott Peters  
San Diego City Council, District One  
202 C Street, 10th Floor  
San Diego, CA 92101

Dear Council President Peters:

I am writing in support of the Broadway Complex Coalition's appeal of the Development Services Department's regarding the 1990 Environmental Impact Report (EIR) for the Navy Broadway Complex.

The Development Services Department memo, dated October 19, 2006, provides insufficient detailed data to support the finding that the 1990 Environmental Impact Report (EIR) is sufficient for the current Navy Broadway Complex proposal submitted by Manchester Financial Group.

I agree with the Broadway Complex Coalition that a Supplemental or Subsequent EIR (SEIR) is required before the project is approved.

I strongly urge the City Council to allow the appeal and return the project to Development Services Department with the direction to prepare a Supplemental Environmental Impact Report.

Thank you for your consideration.

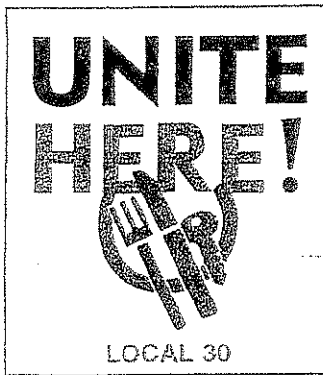
Sincerely,

*Lori Saldaña*

Assembly Member Lori Saldaña  
76th District

LS: jk

cc: San Diego City Council Members



Affiliated with...

State Federation of Labor  
State Culinary Alliance  
San Diego Central Labor Council  
Union Label & Service Trades Council

By facsimile and US mail

Council President Scott Peters  
202 C Street, MS #10A  
San Diego, CA 92101  
Fax: (619) 236-6999

11/1/06

RE: Support for CEQA appeal of Navy Broadway

Dear Council President Peters:

The North Embarcadero redevelopment efforts will directly impact many of our members who work downtown, particularly at Holiday Inn on the Bay. For this reason we have been closely following the Navy Broadway Complex project.

We are heartened by your announcement that you will docket an appeal of the Development Services determination that no additional environmental review of NBC is necessary.

You and the more senior members of Council are well aware of the baggage that comes with old project agreements. We support a new CEQA analysis of the Navy Broadway project because so much has changed downtown; and like those appealing the Development Services decision, we do not believe that the previous documents, or the recent downtown update, are adequate.

The situation of public utilities and infrastructure alone are dramatically different than when Navy Broadway was approved. And because there has been no disclosure of the real project cost impacts and revenue streams, there is no way to know whether those impacts are insignificant or mitigable. Which means the new downtown MEIR is inadequate for the project.

Further, we noticed in construction press a report that Manchester Financial Group has actually hired an environmental consultant, SCS Engineering, "retained to conduct environmental due diligence." I will not speculate on why MFG has done this; but that article is attached. It was published the same week as the Development Services report.

We urge you and all Council members to protect the City's interest, and require a new environmental impact report for the NBC project.

Sincerely,

Molly Rhodes, Ph.D.  
Senior Research Analyst



SAN DIEGO CHAPTER  
sandiego.sierraclub.org

November 5, 2006

The Honorable Scott Peters and City Council  
City of San Diego  
202 C Street  
San Diego, California 92101

The Sierra Club, San Diego Chapter, wishes to join the Broadway Complex Coalition in its appeal of the decision by the Mayor's office that the Environmental Impact Report for the Navy Broadway Complex prepared in 1990 is adequate to address the environmental impacts from the project.

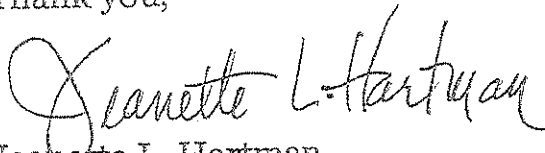
The appeal being submitted by the Coalition will contain detailed information regarding the inadequacy of the 1990 EIR. In summary, the 1990 EIR inadequately addresses impacts for the NBC because:

1. Changes in environment statutes and regulations have occurred that were not anticipated in 1990. In water quality alone, one of the important areas of impact from this project, there have been three substantial areas of change since 1990: 1) Changes in water quality regulations, 2) Changes in water and sediment quality data for San Diego Bay, and 3) Clean Water Act Section 303 (d) listing of impaired water in San Diego Bay.

2. Environmental impacts from development in downtown San Diego that were not anticipated in 1990. To give one example, property directly North of NBC across Broadway that was slated to be a park in 1990 is now going to be commercially developed, significantly adding to non-point source runoff, air pollution and traffic congestion in the NBC vicinity. Impacts from this development were not considered in the 1990 EIR.

Unanticipated significant changes in environmental regulations since 1990 and significant environmental impacts not anticipated in 1990 warrant the preparation of an addendum to the 1990 EIR, if not a new EIR, for the Navy Broadway Complex.

Thank you,



Jeanette L. Hartman  
Co-Chair, Land Use Committee

Cc: Joe Zechman, Chapter Chair, Ellen Shively, Conservation Chair,  
Linda Briggs, Co-Chair, Land Use Committee



## SAN DIEGO AUDUBON SOCIETY

4891 Pacific Highway, Suite 112 • San Diego, CA 92110 • 619/682-7200 • Fax 619/682-7212

October 27, 2006

The Honorable Scott Peters and Council Members:  
City of San Diego  
202 "C" Street  
San Diego, California 92101

Dear Council President Peters and Council Members:

I am writing on behalf of the San Diego Audubon Society in support of the Broadway Complex Coalition's appeal of the finding by the Development Services Department that the 1990 Environmental Impact Report (EIR) for the Navy Broadway Complex (NBC) is sufficient for the proposed 2006 project for the NBC site submitted by Manchester Financial.

The weaknesses of the Development Services Department finding are identified in the Broadway Complex Coalition appeal document. The San Diego Audubon Society agrees that a supplemental or subsequent EIR (SEIR) is required before the project is approved. The surrounding recent developments, conditions, facility and infrastructure needs, new attractions, and the current understanding of many environmental problems, such as Global Climate Change and the water quality impacts of urban runoff, have changed significantly since 1990. This project will have too much of an impact on the downtown area and the Bayfront for the environmental analysis to be based on out-of-date information.

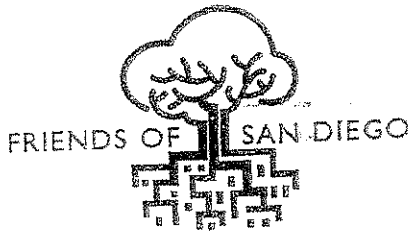
We strongly urge the City Council to allow the appeal and return the project to Development Services Department with the direction to prepare an SEIR for the proposed project on the Navy Broadway Complex site based on current conditions.

In case of questions or follow-up, I can be reached at 619-224-4591 or [peugh@cox.net](mailto:peugh@cox.net).

Respectfully,

James A. Peugh  
Conservation Committee Chair





*Dedicated to preserving  
the environment and  
quality of life through  
effective growth  
management*

3636 4th Avenue, Suite 310  
San Diego, CA 92103

Tel: 619-795-1753  
Fax: 619-795-1756  
email: [FriendsOfSD@aol.com](mailto:FriendsOfSD@aol.com)  
[www.friendsofsandiego.org](http://www.friendsofsandiego.org)

November 5, 2006

Dear Council President Peters  
and City Council Members:  
City of San Diego  
202 "C" Street  
San Diego, California 92101

Re: Navy Broadway Complex (NBC);  
New environmental report needed

The City finds itself at a crossroads with the issue of waterfront development. Will the City Council take the opportunity to reconsider the current approach, or push forward in spite of the alarms sounded?

The Friends of San Diego is a non-profit public interest corporation involved in urban quality of life issues. We support the appeal filed by the Broadway Complex Coalition, in their challenge to using the 1990 Environmental Impact Report for the NBC site.

Clearly the City cannot afford to rely on an outdated document. Previous assumptions about traffic, parkland, air and water quality, and security are no longer valid, 16 years after the 1990 EIR. The Broadway Complex Coalition and SOFAR have detailed these and other serious deficiencies of the currently proposed project and the 1990 EIR.

The Friends of San Diego urge the City Council to require a supplemental or subsequent EIR before the project is approved.

Sincerely,

Thomas G Mullaney

Thomas G. Mullaney, President

# **PUBLIC TRUST ALLIANCE**

## **A Project of the Resource Renewal Institute**

Rm. 290, Bldg. D  
Fort Mason Center  
San Francisco, CA 94123  
Tel.: (510) 644-0752

**October 27, 2006**

The Hon. Scott Peters and City Council  
City of San Diego  
202 C Street  
San Diego, CA 92101

The Public Trust Alliance is dedicated to defending threatened public heritage and ensuring its responsible management by public trustees. We are joining the Broadway Complex Coalition's appeal of the "finding" by your Development Services Department suggesting that a decades old analysis sufficiently supports the most recently proposed redevelopment. Conditions have materially changed in significant ways since that analysis. The San Diego City Council is the "Lead Agency" for this project for purposes of the California Environmental Quality Act (CEQA). When a public organ with "Lead Agency" responsibilities proceeds with inadequate analysis and legally insufficient documentation, all Californians are injured. The consequences are magnified when the cumulative environmental impacts include the irreparable degradation and loss of public access to resources held in trust for the public. This development should not proceed without legally sufficient findings that public benefits outweigh the costs imposed on the public's environment. A Supplementary Environmental Impact Report must be prepared and certified to support any legitimate Federal or State action in this case.

San Diego is indeed a Navy town. A loyalty to a healthy partnership between the people of San Diego and the institution known for defending the freedoms and values of our nation has long been a deep-seated aspect of everyday life in the city. But it is the defense of the broadest shared values of our society that inspires that loyalty, not the incidental benefits for contractors and military suppliers. In this case, the relationship between a powerful local economic actor and public representatives appears to have been dominated by ambitions for private gain. Our laws require an open, deliberate and adequate weighing of relative costs and benefits of development. Mere assertions are not legally sufficient to support either State or Federal action in this case (including the signing of any leases of public property). It is the responsibility of all actors in this process to proceed with legally adequate environmental analysis and documentation.

We look forward to further contacts as you undertake your public duties in connection with this development. Please don't hesitate to call us if you have any questions.

Sincerely,

Michael Warburton  
Executive Director

### Appendix 3

Letter from Assembly member Lori Saldana to Ms. Jennifer LeSar, Chair  
CCDC Board of Directors dated October 25, 2006. (Ref. 6).

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0076  
(916) 319-2076  
FAX (916) 319-2176

DISTRICT OFFICE  
557 COLUMBIA STREET  
SAN DIEGO, CA 92101  
(619) 645-3090  
FAX (619) 645-3094

Assembly  
California Legislature



LORI SALDANA  
ASSISTANT MAJORITY WHIP  
ASSEMBLY MEMBER, SEVENTY-SIXTH DISTRICT

COMMITTEES:  
APPROPRIATIONS  
NATURAL RESOURCES  
VETERANS AFFAIRS  
WATER, PARKS AND WILDLIFE

SUBCOMMITTEES:  
CHAIR, BASE CLOSURE AND  
REDEVELOPMENT

SELECT COMMITTEES:  
CHAIR, BIOETHICS, MEDICINE  
AND TECHNOLOGY

October 25, 2006

Ms. Jennifer LeSar  
Chair, CCDC Board of Directors  
222 Broadway, Ste. 1100  
San Diego, CA 92101

Dear Ms. LeSar,

As the board works toward its decision on the Master Plan for the Navy Broadway Complex, I wanted to express my concerns about the advisability of siting the headquarters of the Navy Region Southwest on this property. I believe a high-rise military facility in a highly populated urban setting could pose a risk to downtown residents, tourists and workers.

The development agreement signed by the City and the Navy predates the 1993 attacks on the World Trade Center, the Oklahoma City bombing in 1995, and the attacks of September 11 - all acts of terrorism which targeted urban structures of symbolic value within the United States.

It bears repeating that San Diego has one of the largest complexes of military installations in the U.S. I believe that the value as a headquarters of this important military installation, its waterfront setting and its high-profile may make it and adjacent civilian structures vulnerable. While it may be true the Navy building itself can be adequately protected by traffic barriers and other security measures, these do not necessarily eliminate the possibility that it or the adjacent complex would be targeted.

To underscore the potential risk to domestic military installations, I refer to the testimony of then Captain Len Hering, Commander of Naval Base San Diego, at a Congressional hearing in June of 2001:

"Nobody wants to believe that something like the Khobar Towers or the U.S.S. Cole could possibly happen in America's Finest City; and more importantly, not on a military facility. We all know that it is not true and . . . I have come to realize those risks can no longer be taken."

Rear Admiral Hering clearly foresaw the necessity of reducing risks to domestic military installations, but I believe that placing the Navy building downtown poses an unnecessary risk to civilian residents. I do not believe that either the 1992 Agreement or the current Master Plan adequately addresses the security and safety concerns posed to downtown residents and visitors by siting a high-profile military building downtown.

2

I would submit that the CCDC Board should consider further refinements to the MPQ Master Plan in an effort to relocate the Navy headquarters to a more secure site.

Thank you for your consideration.

Sincerely,



Assembly Member Lori Saldaña  
76<sup>th</sup> District

cc: Fredric Maas, Robert A. McNeeley, Wayne Rafflesberger, Kim John Kilkenny, Janice Brown, Teddy Cruz, Nancy Graham

## Appendix 4

Letter to the Board of Directors CCDC dated October 3, 2006 from Shute, Mihaly  
& Weinberger LLP on behalf of SOFAR (Ref.7)

SHUTE, MIHALY & WEINBERGER LLP  
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.\*  
MARK J. WEINBERGER (1946-2006)  
FRANK M. LAYTON  
RACHEL B. HOOPER  
ELLEN J. GARBER  
TAMARA S. GALANTER  
ELLISON FOLK  
RICHARD S. TAYLOR  
WILLIAM J. WHITE  
ROBERT S. PERLMUTTER  
OSA L. WOLFF  
MATTHEW D. ZINN  
CATHERINE C. ENGBERG  
AMY J. BRICKER  
GABRIEL M.B. ROSS  
DEBORAH L. KEETH  
WINTER KING  
\*SENIOR COUNSEL

396 HAYES STREET  
SAN FRANCISCO, CALIFORNIA 94102  
TELEPHONE: (415) 552-7272  
FACSIMILE: (415) 552-5616  
WWW.SMWLAW.COM

KEVIN P. BUNDY  
ANDREA RUIZ-ESQUIDE  
SHERIDAN J. PAUKER  
ELENA K. SAXONHOUSE

LAUREL L. IMPETT, AICP  
CARMEN J. BORG, AICP  
URBAN PLANNERS

DAVID NAWI  
ANDREW W. SCHWARTZ  
OF COUNSEL

October 3, 2006

Board of Directors  
Centre City Development Corp.  
225 Broadway, Suite 100  
San Diego, CA 92101  
Fax: (619) 236-9148

VIA E-MAIL, FAX AND U.S. MAIL

Re: Navy Broadway Complex – Proposed Development – Consistency  
Determination

Dear Chairperson LeSar and Members of the Board of Directors:

We submit this letter on behalf of Save Our Forest and Ranchlands ("SOFAR"), an organization dedicated to progressive city planning and the protection of wilderness, watershed, and agricultural resources in the San Diego region. On behalf of SOFAR, we have reviewed the 1990 Environmental Impact Statement ("EIS") and related Environmental Impact Report ("EIR") (together, "EIS/EIR") for the Navy Broadway Complex project, and the Manchester Pacific Gateway Masterplan ("Project"). Pursuant to the 1992 Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex ("Agreement"), the Board is now charged with determining whether the Project is consistent with the terms of the Agreement. As the July 21, 2006, staff report to the Real Estate Committee of the Centre City Development Corporation ("CCDC") suggests, this consistency determination is a discretionary action subject to the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.* (hereinafter "CEQA § 21000 *et seq.*") and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 *et seq.* (hereinafter "Guidelines § 15000 *et seq.*"). We are writing to inform the Board of the Centre City Development Corporation that, before making this consistency determination, the Board must prepare a Subsequent or Supplemental Environmental Impact Report ("SEIR") pursuant to CEQA section 21166.

CEQA section 21166 provides that an SEIR must be prepared if: "Substantial changes occur with respect to the circumstances under which the project is being undertaken



Chairperson LeSar  
October 3, 2006  
Page 2

which will require major revisions in the [EIR],” or “new information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.” See also CEQA Guidelines §§ 15162, 15163. The rapid development and population explosion of the City of San Diego over the sixteen years since the EIS/EIR was prepared for the Project certainly amounts to a “substantial change,” requiring further environmental review. Moreover, the EIR prepared for the Downtown Community Plan (Community Plan EIR), referred to in the CCDC Staff Report dated July 21, 2006, provides new information about these changed circumstances, most notably the changed traffic and circulation circumstances, which indicates that the Project, if carried out today, would have significant impacts that were not considered in the 1992 EIR. Therefore, we urge the Board to prepare and circulate for public review an SEIR before making a final consistency determination.

**I. THE PROJECT WILL HAVE SIGNIFICANT TRAFFIC IMPACTS NOT ANALYZED IN THE EIS/EIR BECAUSE TRAFFIC CONGESTION IN DOWNTOWN SAN DIEGO HAS DRAMATICALLY INCREASED IN THE LAST FIFTEEN YEARS.**

One of the most significant changes to the environment of San Diego over the last fifteen years has been the dramatic increase in traffic congestion. Because of this changed circumstance, the additional traffic caused by the Project will now have significant impacts that were not analyzed or mitigated by the EIS/EIR. For example, according to the analysis in the EIS, the intersection of Grape and Harbor was at Level of Service (“LOS”) B during P.M. Peak Hour in 1990. EIS at 4-40.<sup>1</sup> According to the Community Plan EIR, today that same intersection operates at LOS F during P.M. Peak Hour. Community Plan EIR at 5.2-27. The LOS at the intersections of Hawthorne and Harbor and Hawthorn and Pacific Highway has also deteriorated. Compare EIS 4-40 with Community Plan EIR at 5.2-28. Whereas the trips generated by the Project may not have significantly impacted the levels of service at these intersections in 1990, it is entirely possible that they will today, and the Board must prepare an SEIR to analyze these significant impacts.

Traffic congestion on San Diego’s freeways and freeway on- and off-ramps has also intensified since the Project’s impacts were analyzed in 1990. The EIS/EIR concluded that the traffic generated by the Project and other foreseeable development in downtown San Diego would not surpass the capacity of the four freeway interchanges servicing the Centre City area. EIS at 4-54. The Community Plan EIR provides new information demonstrating that, in fact, the cumulative impacts of this Project and other projects contemplated in the Community Plan will result in significant and unavoidable impacts to freeway segments (I-5, SR-163 and SR-94) and freeway ramps serving the downtown area. Community Plan EIR at 5.2-51 and 5.2-53.

---

<sup>1</sup>Although the EIS was drafted in 1990, the traffic counts it used were from 1988. See EIS at 4-35.

Chairperson LeSar  
October 3, 2006  
Page 3

**II. THE BOARD MUST PREPARE AN SEIR TO ANALYZE THESE SIGNIFICANT TRAFFIC IMPACTS.**

Given this new information, the Board must provide decision-makers and the public with an SEIR that includes an up-to-date, project-level analysis of the Project's traffic impacts. Moreover, this SEIR must include an analysis of potential mitigation measures to reduce these impacts. See CEQA §§ 21002, 21002.1, 21061. One obvious measure would be to require the developer to contribute to a fund to improve public transportation. In this era of rapid development in downtown San Diego, it is essential that CCDC take every opportunity to support and improve public transit. It is only fair that a developer proposing to add thousands of residential units and millions of square feet of commercial space be required to mitigate the significant traffic impacts such development will cause by supporting an alternative to automobile use downtown.

Finally, pursuant to CEQA section 21081, if the Project will have potentially significant environmental impacts, the Board must issue findings stating that it has taken steps to reduce these impacts to a less-than-significant level. If the Board cannot take such steps, it must issue a statement of "overriding considerations," explaining why, despite the significant, adverse environmental impacts of the project, the Board has decided to make its consistency finding anyway.

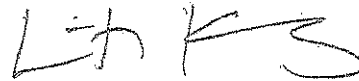
The Board may not simply rely on the Community Plan EIR as a general update of the EIS/EIR. Although the analysis of the traffic impacts contained in the Community Plan EIR provides useful, new information about traffic conditions in downtown San Diego, the Community Plan EIR cannot take the place of a project-specific SEIR. The Downtown Community Plan and the Community Plan EIR refer to the Project in only the most general terms; they never describe in any detail the proposed development of the Navy Broadway Complex. Therefore, it is not possible to compare the Complex, as contemplated in the Community Plan EIR, with the actual proposed development project. In addition, the Community Plan EIR did not purport to serve as environmental review of the Project. As a result, individuals concerned about the Navy Broadway Complex would not have known to submit comments to the Board about the adequacy of the Community Plan EIR's analysis of the Project's impacts.

//  
//  
//  
//  
//  
//  
//

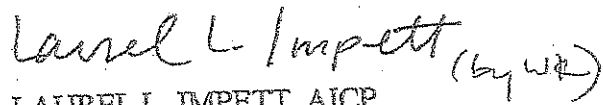
Chairperson LeSar  
October 3, 2006  
Page 4

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



WINTER KING



LAUREL L. IMPETT, AICP  
Urban Planner

cc: Helen Peak  
Marco Gonzalez  
Duncan McFetridge

[PASOFAR\GEN\wk001(Cmt Letter re Consistency Determination).wpd]

## Appendix 5

California Coastal Commission letter dated October 25, 2006 to Rear Admiral Len Hering, Commander Navy Region Southwest (Ref. 8)

## CALIFORNIA COASTAL COMMISSION

1500 CALIFORNIA STREET, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 DE AND TDD (415) 604-5200



October 25, 2006

Rear Admiral Len Hering  
 Commander Navy Region Southwest  
 937 North Harbor Drive  
 San Diego, CA 92132-0058

Re: CD-47-90, Navy Broadway Complex

Dear Rear Admiral Hering:

On May 7, 1991, the Commission concurred with a consistency determination from the U.S. Navy for redevelopment of the Broadway Complex site located in downtown San Diego. The Navy proposed to enter into a joint venture with a private developer for the redevelopment of the Broadway Complex site as a 3,250,000 square-foot mixed-use office, hotel, and retail development that was to include Navy office space. The complex was to consist of 4 buildings with heights of 400 ft., 350 ft., 250 ft., and 150 ft., and was intended to be designed consistent with City planning guidelines in effect at that time. The Agreement also committed the Navy to make available 1.9 acres of open space land at the west end of Block 1 to the City at no cost.

After the Commission acted, the Navy entered into a Development Agreement, dated November 2, 1992, which spelled out Navy and City roles. It further specified guidelines under which the project was to be designed, and provided for review by the Centre City Development Corporation (CCDC), San Diego's downtown redevelopment agency, to determine whether the ultimate project was consistent with the Development Plan and Urban Design Guidelines.

In its 1991 action, the Commission found the project to be consistent with then-existing and approved local coastal plans for development on the downtown waterfront. The project was dormant for many years but recently became activated; the Navy selected a private developer and new project is being reviewed at the local level (CCDC). We have been informed that while the project has been revised (Attachment 1 to this letter, taken from CCDC's website, depicts the changes and compares them to the original design), CCDC will shortly rule on the question of whether the current version of the project is consistent with the Development Agreement signed by the City and the Navy in the early 1990's. Regardless of any CCDC ruling on that question, separate questions are raised as to whether the project remains

Page 2

consistent with the California Coastal Management Program (CCMP), and whether the non-Navy portion of the project requires a coastal development permit.

Under the federal consistency regulations, when a federal agency project has not commenced, the Navy has an obligation to provide a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. The Coastal Zone Management Act (15 CFR part 930) regulations provide:

§930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if: (1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource. [Emphasis added]

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies. [Emphasis added]

This letter is to inform the Navy (and by copy, to the selected developer) that the Coastal Commission staff believes that project modifications have occurred between 1991 and the current version of the project. In addition, new development patterns and intensification of uses have occurred in downtown San Diego since 1991. Both of these changes fall within the trigger for a supplemental federal consistency review and constitute impacts to coastal use or resources substantially different than originally described. As such, the Commission staff believes that both a consistency determination from the Navy and a coastal development permit application to the Commission from the developer are required.

Our primary reasons for asserting that the project has changed and that circumstances have changed include: (1) changes in development patterns and intensification of uses and traffic in the downtown shoreline area have occurred since 1991 which may adversely affect the scenic amenities of the waterfront and coastal access opportunities; (2) a significant change to the project consisting of replacing traditional hotel(s) with condominium ownership hotel(s); and (3) modifications to the physical development as shown on the attachment.

Since the Coastal Commission's previous action in 1991, there have been numerous changes in the City's downtown core and waterfront. Petco Park has been developed; the Convention Center has been expanded; the second tower of the Hyatt Regency has been constructed and

Page 3

the U.S.S. Midway now sits permanently berthed across from the Navy Broadway Complex. All of these singular developments, along with the steady growth of the downtown area, have resulted in significant physical changes to the landscape and particularly the City's waterfront character. The Broadway Complex's redevelopment needs to be reassessed in the context of the current character and profile of the downtown. The argument has been made by the prospective lessee that the Broadway Complex has been accounted for and recognized in subsequent planning efforts by both the City and Port of San Diego; and, as such, the Broadway Complex has been repeatedly reassessed and endorsed by respective discretionary bodies. However, this assertion, along with repeated statements that the Broadway Complex and subsequent developments conform with adopted land use plans fails to recognize that multiple variations of a development may be found consistent with such plans but, nonetheless, may have dramatic differences in their urban character and resulting visual impacts. In addition, based on the City's recent CEQA analysis for the project, dated 10/19/06, it should be noted that the March 2000 North Embarcadero Visionary Plan EIR did not consider the Broadway Complex in its cumulative analysis for Urban Design/Visual Quality. Therefore, the Commission staff believes that the Broadway Complex needs to be re-evaluated to determine its consistency with the visual resource policies of the Coastal Act in the context of the current physical character of San Diego's bayfront.

In addition to the changes in the visual character of the City's downtown area, the changes in development intensity and resulting impacts to traffic circulation, parking demand and public parking reservoirs warrant reassessment. Once again, in its original action, the Commission relied on conformity with the land use plans and implementation of the City's Transportation Action Plan's ("TAP") identified circulation improvements to assure coastal access would be protected. However, the adopted findings on the Broadway Complex noted "the Commission is concerned about the effect of significant deviations from the expectations of the TAP on the City's transportation system, and thus on public access to the coast." Given the intervening developments previously cited, a reassessment of the Broadway Complex proposal in light of current circulation patterns and public mobility in the downtown area is warranted. In particular, it should be noted that the recently adopted Downtown Community Plan/Centre City Planned District Ordinance EIR (2/06) found that impacts from their implementation on parking and the downtown street system were significant and unmitigable. Such findings reinforce the need to reassess the possible impacts of the Broadway Complex redevelopment on coastal access. In addition, the Commission staff has been increasingly concerned about the diminishing supply of public parking reservoirs, coupled with the lack of alternate transit development, to support public access opportunities. Commitments have been made in multiple Port Master Plan amendments but there is little evidence of a waterfront shuttle system being developed to either transport the public from perimeter parking lots to downtown/waterfront locations or to facilitate their movement along the bay.

In 1991, the Commission found that the project's hotel component, providing visitor-serving uses, was critical to its ability to approve such an intensive use, much of which consisted of non-priority uses under the Coastal Act, next to the shoreline. The Commission found:

*The Navy's proposal also raises the issue of the development of waterfront areas with non-priority uses. The proposed project includes commercial office uses, which are not*

Page 4

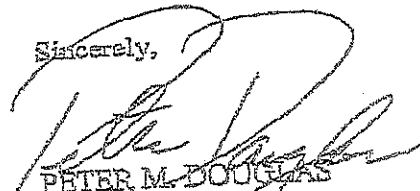
*priority uses for waterfront sites. Several sections of the CCMP, Sections 30221, 30222, 30223, and 30255 of the Coastal Act, identify priority uses for waterfront areas. Although office use is not a high priority use, the development, as a whole, provides for improved coastal access and recreation and thus is consistent with the Priority Use policies of the CCMP.*

Because condominium hotels are sold as individual units to private individuals, the units cannot be assured to be visitor-serving and, in fact, may become quasi-residential units, which is a lower priority use under the policies of the Coastal Act (Sections 30221, 30222, 30223, and 30255). In addition, the units are likely to be less affordable, in conflict with Section 30213, which provides priority to developments providing lower cost visitor and recreation opportunities. Thus, changing the hotel units to condominium ownership has the potential to alter the balance of visitor-serving uses to non-visitor serving uses, a change which the Commission will need to review as a changed circumstance and determine whether the project remains consistent with the public access and recreation policies of the Coastal Act. Attached (Attachment 2) are the relevant pages from the Commission's 1991 findings which discuss how the original project was able to be found consistent with those policies.

Finally, we believe the non-Navy portions of the project, which constitute the majority of the entire project, require a coastal development permit. When the Commission conducted its 1990-1991 review, the Commission found while a permit might not be needed if the project remained the same, that: "[a]ny proposed deviation..." would trigger the need for a new consistency determination from the Navy and/or a coastal development permit from the developer.

If you have any questions, please contact Mark Delaplaine, Federal Consistency Supervisor, at (415) 904-5289.

Sincerely,

  
 PETER M. DOUGLAS  
 Executive Director

## Attachments (2)

- 1) CCDC Website page comparing 1991 to current development
- 2) CCC findings, CD-47-90, pp. 8-15

cc: San Diego Area Office  
 CCDC  
 Doug Manchester  
 OCRM



## Appendix 6

Selected Examples of Inaccurate Predictions in the 1990 Navy Broadway  
Complex EIR

check # 126 ATTACHMENT 03  
\$100 Fee - check city treasurer



RECEIVED  
CITY CLERK'S OFFICE  
City of San Diego  
Development Services  
1222 First Ave. • 3rd Floor  
San Diego, CA 92101-4154  
(619) 446-5210  
NOV - 6 AM 10:45

# Development Permit/ Environmental Determination Appeal Application

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:
- ☐ Process Two Decision - Appeal to Planning Commission
  - ☐ Process Three Decision - Appeal to Planning Commission
  - ☐ Process Four Decision - Appeal to City Council
  - ☒ Environmental Determination - Appeal to City Council
  - ☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name Katheryn Rhodes & Conrad Hartsell, M.D.  
Address 371 San Fernando Street, San Diego, CA 92106 City San Diego State CA Zip Code 92106 Telephone 619-523-4350

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

4. Project Information  
Permit/Environmental Determination & Permit/Document No.: Navy Broadway Complex Date of Decision/Determination: October 25, 2006 City Project Manager: R. Manis

Decision (describe the permit/approval decision):  
CCDC voted to approve the CEQA Consistency Analysis prepared by Development Services Department

5. Grounds for Appeal (Please check all that apply)
- ☒ Factual Error (Process Three and Four decisions only)
  - ☒ Conflict with other matters (Process Three and Four decisions only)
  - ☒ Findings Not Supported (Process Three and Four decisions only)
  - ☒ New Information (Process Three and Four decisions only)
  - ☒ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Appeal of Environmental Determination by DSP  
Please see our report entitled "Formal Appeal to the City Council regarding the CEQA Consistency Analysis, Navy Broadway Complex, San Diego, California" dated November 3, 2006. This appeal was emailed to all city council members, the mayor, the city attorney, and DSP on November 3, 2006 and is attached.

The appeal is based on CEQA Section 21066 due to substantial changes that occurred with respect to circumstance under which the project is being undertaken, and new information which was not known, and could not have been known at the time the EIR/EIS was certified complete. We are requesting a new or supplemental EIR/EIS be conducted ASAP.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.  
Signature: Katheryn Rhodes Date: 11/06/2006

Note: Faxed appeals are not accepted.

November 3, 2006  
 Revised November 7, 2006

To: CCDC and the City of San Diego

Subject: Formal Appeal to the City Council regarding the CEQA Consistency Analysis prepared by the Development Services Department (DSD) dated October 19, 2006, Navy Broadway Complex, downtown San Diego, California.<sup>1</sup>

The following is our formal appeal<sup>2</sup> regarding the CEQA Consistency Analysis for the 1990 Environmental Impact Report (EIR)<sup>3</sup>, the 1990 Environmental Impact Statement (EIS)<sup>4</sup>, and the 1992 Developer Agreement<sup>5</sup> for the Navy Broadway Complex. In their memorandum on the subject dated October 19, 2006, DSD stated the following:

*Section 21166 of CEQA<sup>6</sup> states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required unless one or more of three events occur. These events are:*

- 1. Substantial changes are proposed for the project.*
- 2. Substantial changes occur with respect to circumstances under which the project is being undertaken.*
- 3. New information, which was not know and could not have been known at the time the EIR was certified complete, becomes available.*

*Because none of the three events have occurred, DSD does not find a need to conduct additional environmental review for the proposed NBC project.*

Various sections of the 1990 EIR/EIS are no longer valid in 2006 due to changes in the law in the City of San Diego, the State of California, and the Federal Government; changes in adjacent land uses; and new information that was not available in 1990. Due to substantial changes that occurred with respect to circumstances under which the project is being undertaken, and new information which was not known and could not have been known at the time the EIR was certified complete, a new or supplemental Environmental Impact Report should be conducted for the proposed Navy Broadway Complex.

Our concerns revolve around the following issues: Geology and Seismicity; Timing and Scheduling of the Project; Open Spaces and Parks; Parking; and the 1992 Development Agreement.

Please do not hesitate to contact us if you have any questions or concerns.

Respectfully submitted,

Katheryn Rhodes and Conrad Hartsell, M.D.  
 371 San Fernando Street, San Diego, California 92106  
 (619) 523-4350, [rhodes@laplayaheritage.com](mailto:rhodes@laplayaheritage.com)  
[http://www.laplayaheritage.com/Navy\\_Broadway\\_Complex.htm](http://www.laplayaheritage.com/Navy_Broadway_Complex.htm)<sup>7</sup>

## **A. Geology and Seismicity.**

Due to advancements in technology and our understanding of the science of engineering, standard practice says that geotechnical investigations should not be relied upon after three years. An update to any geotechnical investigation done in 1990 is warranted and required.

Changes in the standard of practice since 1990 include response spectra analysis, use of stone columns, and underwater fault investigations using high resolution seismic reflection surveys as was done as part of the State of California 1997 Open File Reports and the 2001 investigation on faulting in San Diego Bay. Equations for liquefaction analysis have also changed. Many new active fault zones have been discovered in downtown San Diego on land and in the bay since 1990, prompting the original Point Loma Quadrangle Alquist-Priolo map of the mid-1990s and the revised Alquist-Priolo map of 2003.

The California Geological Survey published reports on the reclassification of the Rose Canyon Fault Zone (RCFZ) including the following:

1. *Open File Report 93-02 (OFR 93-02). The Rose Canyon Fault Zone, San Diego County and adjacent offshore area, Southern California, 1993.*<sup>8</sup>
2. *Open File Report 97-10b (OFR 97-10b). Age of Faulting in San Diego Bay in the Vicinity of the Coronado Bridge, An Addendum to Analysis of Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge, 1997.*<sup>9</sup>
3. *Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge. California Geology: 55:4-17, dated 2001, Michael P. Kennedy and Samuel H. Clarke, Jr.*  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California Geology 7801 CG San Diego Bay.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California%20Geology%207801%20CG%20San%20Diego%20Bay.pdf)<sup>10</sup>
4. *Point Loma Quadrangle, State of California Earthquake Fault Zones, Alquist-Priolo Earthquake Fault Zoning Act, California Geological Survey, Revised Official Map, Effective May 1, 2003.*  
[http://www.laplayaheritage.com/La%20Playa/point\\_loma%20Quad%20AP%20Zone.pdf](http://www.laplayaheritage.com/La%20Playa/point_loma%20Quad%20AP%20Zone.pdf)<sup>11</sup>

A very significant change in information that was not in the original EIR, is the major change in the status of the Rose Canyon Fault Zone (RCFZ) from “inactive” to “active” status in the mid-1990s. Based on the active status and the new 1995 City of San Diego Seismic Safety Study<sup>12</sup>, site-specific fault investigations are required in all of downtown. In the mid-1990s, San Diego was redesignated to UBC Seismic Zone 4, the highest zone of ground shaking hazard, from Seismic Zone 3.

The Navy Broadway Complex site is underlain by undocumented hydraulic fill associated with the dredging of San Diego Bay (see Figure 1). The area was either underwater or partially underwater; hence the property is in the jurisdiction of the Port District and the California Coastal Commission. In downtown San Diego, the area west of the train tracks generally consists of undocumented hydraulic fill, over bay deposits (mud), over the Bay Point Formation.

Typically, fault investigations can be excavated with a backhoe extending into formational soils. Due to the depth to the Bay Point Formation at 20 feet and the water table at 8 feet below grade, normal fault investigation techniques cannot be used. Specialized fault investigation techniques such as high resolution seismic reflection surveys are needed. A site specific fault investigation extending below the water table into the Bay Point Formation should be conducted to rule out the presence of an undocumented active fault line. As a note, a very limited trenching in the upper layers of the hydraulic fill was done as part of the archeological survey, but no fault investigation was ever conducted in on site.

In response to the 1997 OFR 97-10b, the State of California law required that the Alquist-Priolo map for the Point Loma Quadrangle be revised to show the new found active fault lines under San Diego Bay (see Figure 2). The area under the Navy Broadway Complex is very close to the active fault zone. The parcels are also on the same directional vector as the active fault line in San Diego bay with no known northern boundary except that the legend says *"query (?) indicates additional uncertainty."*

Figure 3 is the fault location map from the 2001 California Geology article. Note that the Coronado fault has been extended to the edge of the Port District property directly south and within several hundred feet of the Navy Broadway Complex. Excerpts regarding the Coronado Fault of the RCFZ from the 2001 article include the following: *"The location of the fault farther to the north is unknown but, based on a projection along strike to the north, it may intersect or joint the Old Town segment of the Rose Canyon Fault... The Coronado Fault cuts material at or very near the bay floor and is considered to be one of the most youthful faults in this part of the Rose Canyon Fault Zone."*

Another change in the law is the 1995 City of San Diego Seismic Safety Study designating the Downtown Special Fault Hazard zone which requires site specific fault investigations for proposed development projects. The 1990 EIR/EIS was based on the 1982 City of San Diego Seismic Safety Study, by Leighton and Associates<sup>13</sup>. The possible presence of an underwater active fault line beneath the Navy Broadway Complex was anticipated at the time the EIR was certified complete, but in 1990 the City law did not require fault investigations. As a matter of law, since 1995, fault investigation are required in downtown as can be seen the Chapter 5.5, Geology and Seismicity of the Draft Downtown Community Plan Final EIR, dated March 2006<sup>14</sup>  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown\\_FEIR\\_Seismic\\_Geology\\_Impacts.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown_FEIR_Seismic_Geology_Impacts.pdf). Figure 4 - Geologic Formations and Faults, and Figure 5 - Geologic Hazards are taken from the Draft Downtown Community Plan EIR. Please note that the Coronado Fault is considered active. These maps need to be changed to show portions of the Coronado Fault as being active and in the Alquist-Priolo earthquake fault zone.

Figure 6 shows excerpts from the 1990 EIR/EIS for the Navy Broadway Complex. The presumption that no fault underlies the site, and inaccurate assumptions that the closest active fault is located 0.5 to 1.0 miles away, are based on the 1985 report for the Police Administration and Technical Center located at Broadway and 14<sup>th</sup> Street. As stated above, several new active faults as close as a several hundred feet away have been discovered on land in downtown San Diego, underwater in San Diego Bay, and the new delineated (2001) section of the Coronado Fault which trends directly towards the Navy Broadway Complex site.

During the CCDC meeting of October 25, 2006 the City Development Services Department (DSD) acknowledge the lack of a fault investigation on site. DSD told the CCDC board that the developer would have to conduct a fault investigation as part of their "due diligence" and that the time for a fault investigation was "before permits are issued."

<http://www.ccdc.com/events/resources/10.25.06.Agenda%20Special.Corrected.635.pdf>

This may be true for projects which do not required an Environmental Impact Report (EIR). However, this statement by the City DSD incorrectly implies that a fault investigation is not needed as part of the CEQA document and old 1990 geotechnical investigation without a fault investigation is still valid today. As stated during the CCDC meeting, to not require a fault investigation as part of CEQA is "irresponsible" and may bring censure from the State Attorney General, the Division of Mines and Geology, and others. Fault investigations in active earthquake fault zones such as downtown are hazards and are part of the State of California CEQA requirements which are incorporated by reference in the City of San Diego Municipal Code. The mitigations measures identified in the 1990 EIR/EIS would not reduce the impacts of the project to less than significant in 2006. General Sample EIR Questions that are currently "Potential Significant Impacts" include the following: *Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. Strong seismic ground shaking? Seismic-related ground failure, including liquefaction? Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?*

Due to the close proximity of active faults in the area (@ 800 to 1,000 feet) that are trending directly towards the site, a fault investigation is required as part of any EIR/EIS in downtown. As seen in the Draft Downtown Community Plan EIR, due to the fact that the City of San Diego CEQA laws are not being followed and the standard of practice is not being met, the **Environmental Impact Significance Criteria is GEO-A, because it exposes people or structures to substantial risk or injury or loss of life, or destruction of property caused by seismic or geologic hazards.** Based on this fact alone, as a matter of public safety, a CEQA consistency analysis cannot be made by the City of San Diego DSD or the City Council.

In addition, due to the low water table and the possible presence of loose sand, the undocumented hydraulic fill under the Navy Broadway Complex may be subject to liquefaction in the event of an earthquake. The liquefaction analysis cannot be verified because no borings logs or boring location maps were including in the EIR/EIS geotechnical report entitled, "*Additional Geologic, Seismic and Geotechnical Studies - Navy Broadway Complex,*" dated September 5, 1990, by Woodward-Clyde Consultants. A preliminary liquefaction analysis was done, but a new liquefaction analysis with the updated equations and the correct fault parameters is needed.

Heavy, brittle, Unreinforced Masonry (URM) buildings are prone to collapse and failure during earthquakes. The collapse of URM buildings expose people or structures to substantial risk of injury or loss of life, or destruction of property caused by seismic or geologic hazards. The 1986 Unreinforced Masonry (URM) Building law called for inventory and mitigation planning for all pre-1946 unreinforced masonry buildings located in the UBC Seismic Zone 4. *When the law was passed, the city of San Diego was not considered to be in Zone 4 (ICBO, 1985). Since then, San Diego has been added to Zone 4 and has now voluntarily adopted a URM loss reduction program (ICBO, 1997).*<sup>15</sup> Due to the change from Seismic Zone 3 to Zone 4, several hundred buildings in San Diego had to be demolished or seismically upgraded to withstand potential earthquakes. Because of the

very high costs associated with seismic upgrades, hundreds of buildings in downtown San Diego were torn down and replaced with denser, high-rise structures. This change in density at build-out due to a reclassification of the Rose Canyon Fault Zone was not anticipated at the time the 1990 EIR/EIS was certified complete. The 1990 EIR/EIS was based on the 1987 Centre City Statistical Area Population of 12,132 people. In 1992, the estimated population at build-out was 48,000 people. The new 2006 draft EIR for the Downtown Community Plan estimate a population of 89,100 people at build-out.

A new or supplemental EIR for the Navy Broadway Complex should include technical appendices with a site specific geotechnical investigation as well as seismic parameters, a fault investigation, an updated liquefaction analysis, boring logs, and a boring location map in accordance with the City of San Diego Land Development Code. The Developer delivered the final submittal packages for the Master Plan and Navy Buildings on June 30, 2006. If the submittal package contained a new geotechnical investigation, then this new information should be included in the Soil/Geology/Seismicity Section of the new or supplemental EIR as required by law.

## **B. Timing and Scheduling of the Project.**

The City of San Diego Planning Department was the lead agency on the compilation of the 1990 EIR/EIS for the Navy Broadway Complex. The Department of the Navy was the lead agency in the writing and preparation of the EIS.

As mentioned in the 1990 EIR/EIS, *"For the purposes of this analysis, it is assumed that the project would be developed over an approximately 11-year period [1992-2003]... Phase I - 1992-1994: The hotel on Block 4 would be developed... The first phase of the proposed development is currently planned to be completed in 1994."* The EIR/EIS analysis for the Navy Broadway Complex redevelopment was based on a completion date of 2003. The Proposed Phasing Program for Alternative A is shown in Figure 8b (EIR/EIS Figure 3-9). In 2006, development of the project has not started. Therefore, based on the assumed timeline that has not been achieved, the analysis in the 1990 EIR/EIS is no longer valid.

As mentioned in the 1990 EIR/EIS, *"Development of any of the alternatives would require a number of discretionary actions, such as a Coastal Consistency Determination by the California Coastal Commission (CCC)... The key policies relevant to the project site include maximizing public access, emphasizing visitor-serving commercial uses, protecting coastal resources, and locating new development."*

In the CCC letter dated October 25, 2006,<sup>16</sup>, the State of California agency concluded that a Coastal Development Permit from the CCC is required

[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_CCC.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_CCC.pdf).

As stated in the CCC letter, the Navy Broadway Complex project lay dormant from 1992 to 2005 (13 years). Since 1992, there have been new development patterns and intensification of uses in downtown San Diego and on the waterfront. Significant physical changes to the landscape, and particularly the City's waterfront character, have occurred. Also, the Navy's chosen developer (Manchester Financial Group) has proposed numerous changes to the original 1990 plan (Alternative A) studied in the 1990 EIR/EIS. Therefore, the Broadway Complex redevelopment needs to be reassessed in the context of the current character and profile of the downtown area.

As stated in the 1990 EIR/EIS, the City of San Diego will be required to contribute money to reduce impacts on existing infrastructure from the Navy Broadway Complex project. *"The basic project objectives of providing Navy offices at reduced cost to the taxpayers would be met, although some local financial assistance by the City of San Diego for infrastructure improvements (e.g., roadway and streetscape improvements) would be required... Intersection improvements associated with the project or programmed by the City of San Diego would reduce impact at each intersection to below significance."* The 1990 EIR/EIS discussed the "Long-Term Intersection Traffic Impacts" that would be caused the Navy Broadway Complex. The operation of several intersections in the vicinity of the project would be substantially affected including "Grape/Pacific, Broadway/Harbor, Broadway/Pacific Highway, and Broadway/Front." In approving the CEQA Consistency Analysis, the City is agreeing that the City of San Diego will contribute money to reduce negative impacts of the project in the surrounding downtown streets.

### **C. Open Spaces and Parks.**

Additional proposed waterfront projects adjacent the Navy Broadway Complex which were not envisioned in 1990 include the Lane Field Redevelopment Project across Broadway at Harbor Drive (350 and 400 foot high buildings on Harbor Drive between B Street, C Street, and Broadway, four city blocks) which will be developed by both Viejas and the Manchester Financial Group, and the new Cruise Ship Terminal which will be developed by the Manchester Financial Group. The bulk and density of these other proposed buildings on the waterfront make the need for planned open spaces and parks obvious to the citizens of San Diego.

<http://www.portofsandiego.org/projects/nevp/lanefield.asp>.

On Harbor Drive at the foot Broadway, two 400-foot high buildings are proposed. On the south a high-rise hotel/office for the Navy Broadway Complex, and on the north side a high-rise hotel on the existing Lane Field parking lot developed by Viejas and Manchester. For comparison, these buildings will be approximately the same height as the new Broadway 655 high-rise office complex at the southwest corner of Broadway and Kettner Street. <http://www.broadway655.com>

The following are excerpts from the 1990 EIR/EIS:

- *As indicated in the EIS, the Draft Centre City Community Plan highlights that the waterfront is to "serve as its (the City's) major open space, its park and its playground."*
- *A 1.9-acre public open space area would be provided for community use at the foot of Broadway, adjacent the waterfront. This area could potentially be combined with adjacent properties to create an even larger open space that could be considered a new waterfront gateway to downtown San Diego.*
- *A 1.9 acre open space would be provided at the foot of Broadway (see Figure 1-2). This open space area would help implement a long-standing desire by the City of San Diego to provide a gateway to the City from the waterfront. The City of San Diego and the San Diego Unified Port District may contribute adjacent property to create an even larger open space at the foot of Broadway (Coordination with the City and the Port District would be needed to reserve the adjacent area as open space). If reserved, an approximately 10-acre open space area at the foot of Broadway could be provided (See Figure 1-3). The provision of open space outside of the project boundaries is not part of this project.*
- *If a contiguous segment of Broadway is abandoned and the Port District dedicates an adjacent similarly sized area of open space, and approximately 10-acre open space area at the foot of Broadway could be created, as depicted in Figure 3-4. Broadway could be re-routed around the open space to its terminus at Harbor Drive.*



- *Pedestrian access along Pacific Highway would be improved by providing 20-foot wide sidewalks with substantial landscaping, and by stepping development back from the street so as to provide a more pedestrian oriented atmosphere. Buildings would be set back 75 feet from the property line to provide a 25 foot wide sidewalk along Broadway with Alternative A, creating sufficient space for street furniture, substantial landscaping, and high levels of pedestrian use.*

Figures 7 a through 7d, and 8a through 8b are the Illustrations for Alternative A (1990 EIR/EIS Figures 1-2, 1-4, 3-4, 3-5, 3-6, and 3-9). All Figures show the proposed 10-acre park at the foot of Broadway. The 1990 proposed 10-acre park consisted of the 1.9 acre park on the site, closing down Broadway, and extending the park land onto the existing Lane Field parking lot. As mentioned before, Viejas and Manchester Financial Group are building a 400-foot high-rise hotel on the existing Lane Field parking lot across the street and no 10-acre park is planned.

Other changes in conditions since the 1990 EIR/EIS include the Midway Air Craft Carrier Museum established in 2004 directly across the street from the project, with a related increase in traffic and parking impacts from visitors to the museum, and the change in Federal law on the number of ports a cruise ship can enter on one voyage, creating additional traffic impacts in a constricted area.

The Passenger Vessel Services Act of 1886, restricted foreign-built cruise ships from traveling between U.S. ports. The Federal law stated that cruise ships could operate out of only one port per coast line (east coast or west coast) in the continental United States. On the west coast, due to the Federal restrictions, the majority of cruise lines operated out of Los Angeles or Seattle. At the time the 1990 EIR/EIS was written, San Diego did not have a cruise ship industry. The U.S. Cruise Ship Tourism Development Act of 1999 introduced by Senator John McCain (R-AZ), Chairman of the Committee on Commerce, Science, and Transportation, allowed cruise ships to travel between U.S. ports *to help commerce in port cities, the cruise ship industry, and create great traveling options for the public* <http://thomas.loc.gov>.

The 1999 change in the law allowed an unlimited number of ports of call in each state with boarding of new passengers at each port of call. Due to removal of the 1886 Federal restrictions, the cruise ship industry in San Diego has experienced a major expansion since the 1990 EIR/EIS was finalized. We now have several cruise ships entering San Diego harbor and docking on the waterfront in very close proximity to the Navy Broadway Complex. At times, there are 3 or even 4 ships in port at one time. This increase in tourists and service vehicles from the cruise industry in San Diego has created an unanticipated traffic problem on Harbor Drive and Broadway during peak loading and unloading times. Public parking has also become very limited on the waterfront. The change in the Federal law substantially increased the number of ships docking on the B Street pier and is prompting the building of an expanded Cruise Ship Terminal project to be developed by Manchester Financial Group.

## **D. Parking.**

The 1992 Development Agreement states that *"Every reasonable effort should be made to provide two levels of below-grade parking prior to the provision of above-grade parking. At least one level of below grade parking shall be required."* The Centre City Planned District requires three levels of underground parking. Current plans show only one level of underground parking. What reasonable efforts were made to provide for two levels of underground parking at the Navy Broadway Complex? Table D-1 and Figure 9, show the developer's (Manchester Financial Group) proposed planned uses, area in square feet for different uses, and associated parking spaces planned.

**Table D-1**  
**Developer's (Manchester) Parking Proposal**

Use Category	Area in Square Feet	Parking Spaces Provided
Office	1,650,000	1,758 1.07 spaces per 1,000 square feet
Hotel	1,220,000	1,105 Unknown number of hotel rooms.
Retail/Restaurant	25,000	100 4 spaces per 1,000 square feet
Museum/Public Attractions	41,050	Zero Spaces
Public Open Space/Park	213,880 (4.91 Acres)	Zero Spaces
<b>Total Provided</b>	<b>2,936,050 + 4.91 Acre Park</b>	<b>2,963</b>

The 1990 EIR/EIS provided for a total of 3,250,000 square feet of development with an estimated planned **3,105** parking spaces.

In the Centre City Planned District, the minimum parking requirements established in Table 0313-C shall apply to developments located west of California Street between Harbor Drive and Laurel Street. <http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter15/Ch15Art01Division03>

**Table D-2**  
**Portion of Table 0313-C North Embarcadero Off-Street Parking Requirements**

Use Category	Minimum Parking Requirements	Minimum Parking Spaces Required
Office	2.0 spaces per 1,000 sf	3,300
Hotel	0.5 spaces per room	Use Manchester Number of 1,105. Unknown number of hotel room.
Retail	2.5 Spaces per 1,000 sf	Use Manchester Number of 100. Average 4 spaces per 1,000 square feet
Restaurant	5 spaces per 1,000 sf	
Museum/Public Attractions/ Open Space/Park	Unknown	Unknown
<b>Total Required Parking Minus Unknown Requirements for Museum/Public Attractions/ Open Space/Park</b>		<b>4,505</b>

All parking scenario provide for zero public access parking spaces for the museum and park. **The developer (Manchester Financial Group) parking proposal is deficient by 142 parking spaces (5 percent) from the estimate in the 1990 EIR/EIS and 1,542 parking spaces (52 percent) from the required parking provided for in the Centre City PDO.**

The following are excerpts from the 1990 EIR/EIS: *Parking should be provided in accordance with City-adopted parking ratio, and all parking should be in encapsulated structures incorporated into building design, with a minimum of two below ground levels before any above ground levels are constructed... The City of San Diego has no minimum or maximum parking requirement for development in the Centre City area... The largest off-street parking areas in the project vicinity are the lots at the County Administrative Center and the Land Field site, both to the north, with 1,232 and 1,195 spaces, respectively... Land uses in the immediate vicinity include the following: Restaurant uses and parking are located immediately to the north across Broadway.*

Still another change in the City of San Diego Municipal Code is the minimum parking requirements for the Centre City Planned District. In 1990, the City of San Diego has no minimum or maximum parking requirement for development in the Centre City area. However, the 1990 EIR/EIS did say that all parking should be provided in accordance with City adopted parking ratio.

Also, the 1990 EIR/EIS for the Navy Broadway Complex assumed that parking would be available across the street at the Lane Field and County of San Diego public parking lots, a Travel Demand Management program would be implemented, and that people will use alternate modes of transportation, such as mass transit.

Figure 8c, Surrounding Land Use Context (EIR/EIS Figure 4-2) shows the assumed available parking for the Navy Broadway Complex at Lane Field. The Lane Field parking lot will be turned into a 400-foot high hotel by Viejas and Manchester Financial Group. The County of San Diego parking lots allows 2 hour parking only, on a limited number of spaces, only for persons doing business with the County. The remaining spaces are dedicated exclusively for parking by County employees. The assumed surrounding public parking lots will not be available to project user and cannot be counted as available parking for the Navy Broadway Complex.

### **E. 1992 Developer Agreement.**

<http://www.laplayaheritage.com/THINGS%20TO%20ADD%20AT%20A%20LATER%20DATE/Add%20Latest%20New/Naval%20Broadway%20Complex/DevelopmentAgreement.pdf>

The following is the letter to the editor that was published on the Voice of San Diego website on Wednesday, October 18, 2006 *Regarding the article, "The Doug is Not the Problem," the 1992 agreement for the Navy Broadway Complex is good for 25 years until the year 2017. In the event that no Developer Lease was recorded by Jan. 1, 2002, then the agreement was to be of no force and effect without amendments. In Section 4.5, it says the agreement may be amended from time to time or cancelled by mutual consent of the parties but only in the same manner as its adoption by ordinance. I believe only the City Council can pass an ordinance. The City Council passed two amendments/ordinances, the last in 2003 to change the force and effect date from Jan. 1, 2002 to Jan. 1, 2007. All the City Council has to do is pass a Third Amendment to the agreement to change the force and effect date to a later year. There is no hurry to make a decision about the project by Jan. 1, 2007, and Manchester cannot sue the city. At any time, any portion of the property may be released from the agreement. Also, the Navy is not obligated by the agreement to redevelop any part of the Navy Broadway Complex or to enter into any Developer Lease. Also, the Navy shall have the right to transfer or assign its rights under the agreement to the selected developers and the obligations and liabilities of the developers which are described in the agreement shall be assumed in writing by the developers. In the Indemnity and Insurance Section 4.6, the Navy shall include the city, the Redevelopment Agency of the city of San Diego and the Centre City Development Corporation, their officers, employees, contractors and agents, as protected parties and as additional insured in the indemnity and public liability insurance requirements of any Developer Lease. In the Third Parties Section 4.8, the contractual relationship between city and the Navy arising out of the agreement does not create any third party beneficiary rights. Therefore, the developer (Manchester) cannot sue. There is no contract between the city of San Diego and Manchester. Also, the property is 13.67 acres in three parcels separated by E and F Streets. These streets currently belong to the city of San Diego, not the Navy.*



Figure 1 – Portion of the Geologic Map of the San Diego 30' x 60' Quadrangle, California, United States Geologic Survey, 2005.<sup>17</sup>

[http://www.laplayaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego\\_map2\\_ai9.pdf](http://www.laplayaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego_map2_ai9.pdf)

The dark brown areas (Qaf) are underlain by undocumented hydraulic fill.

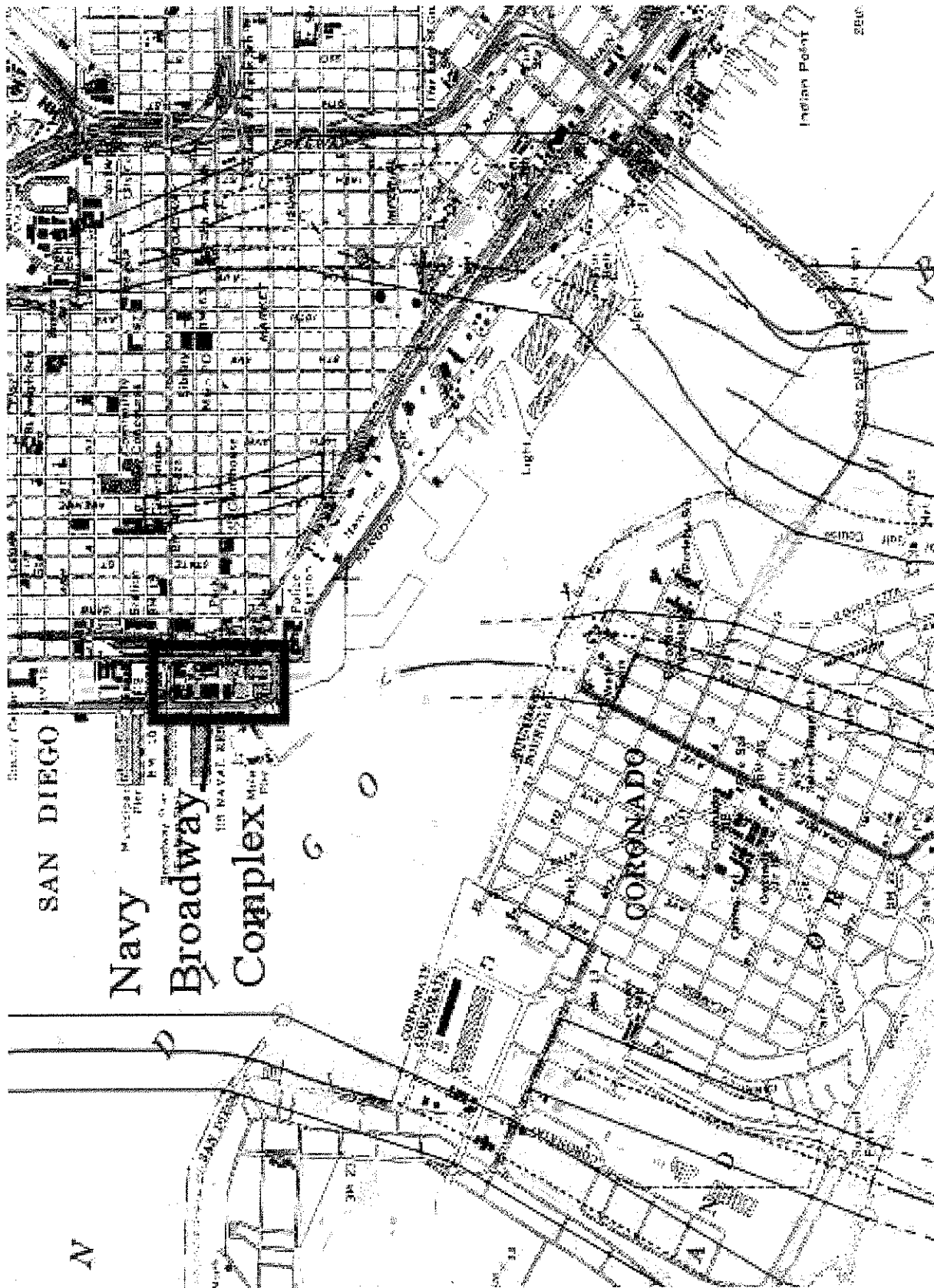
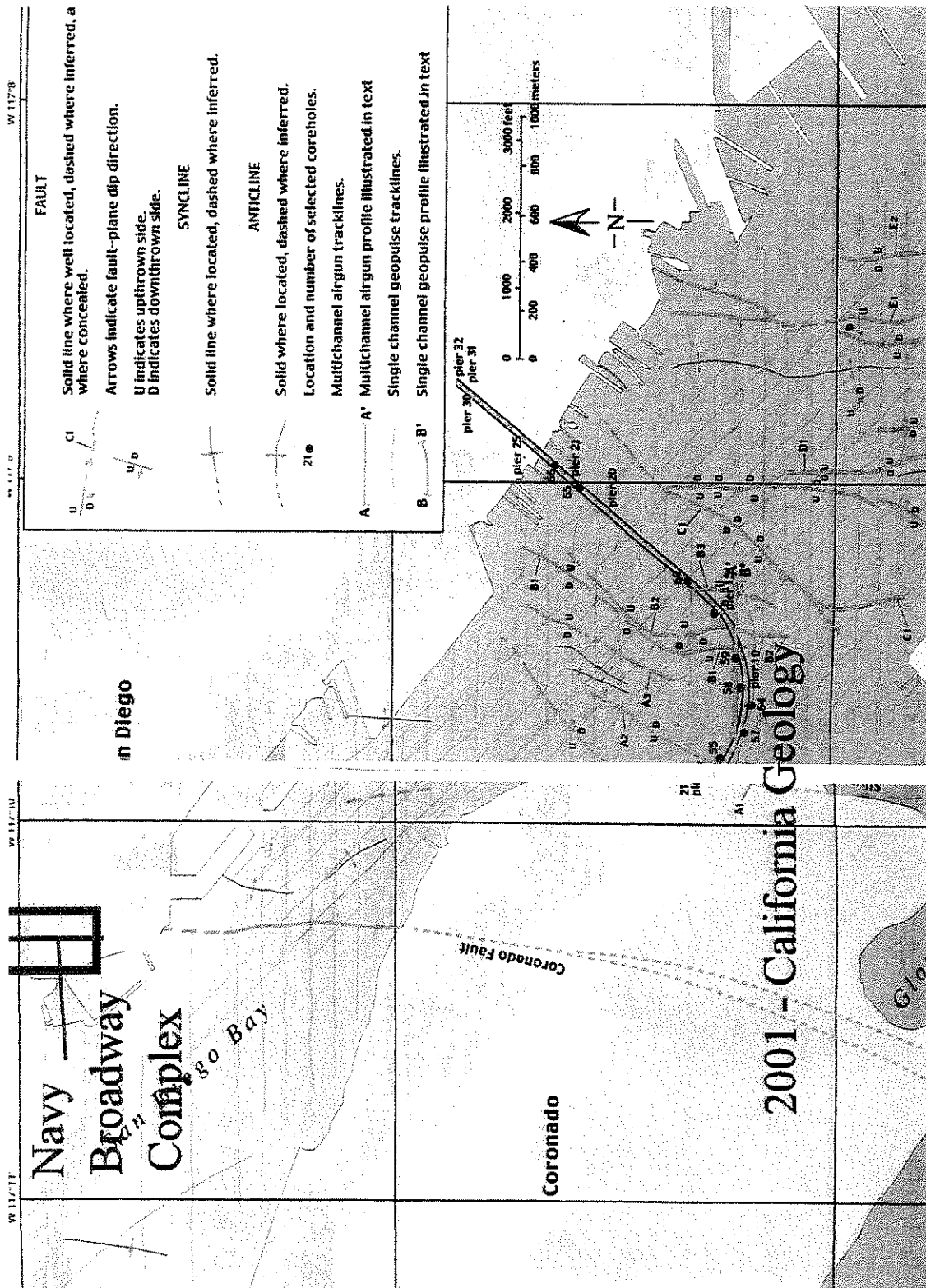
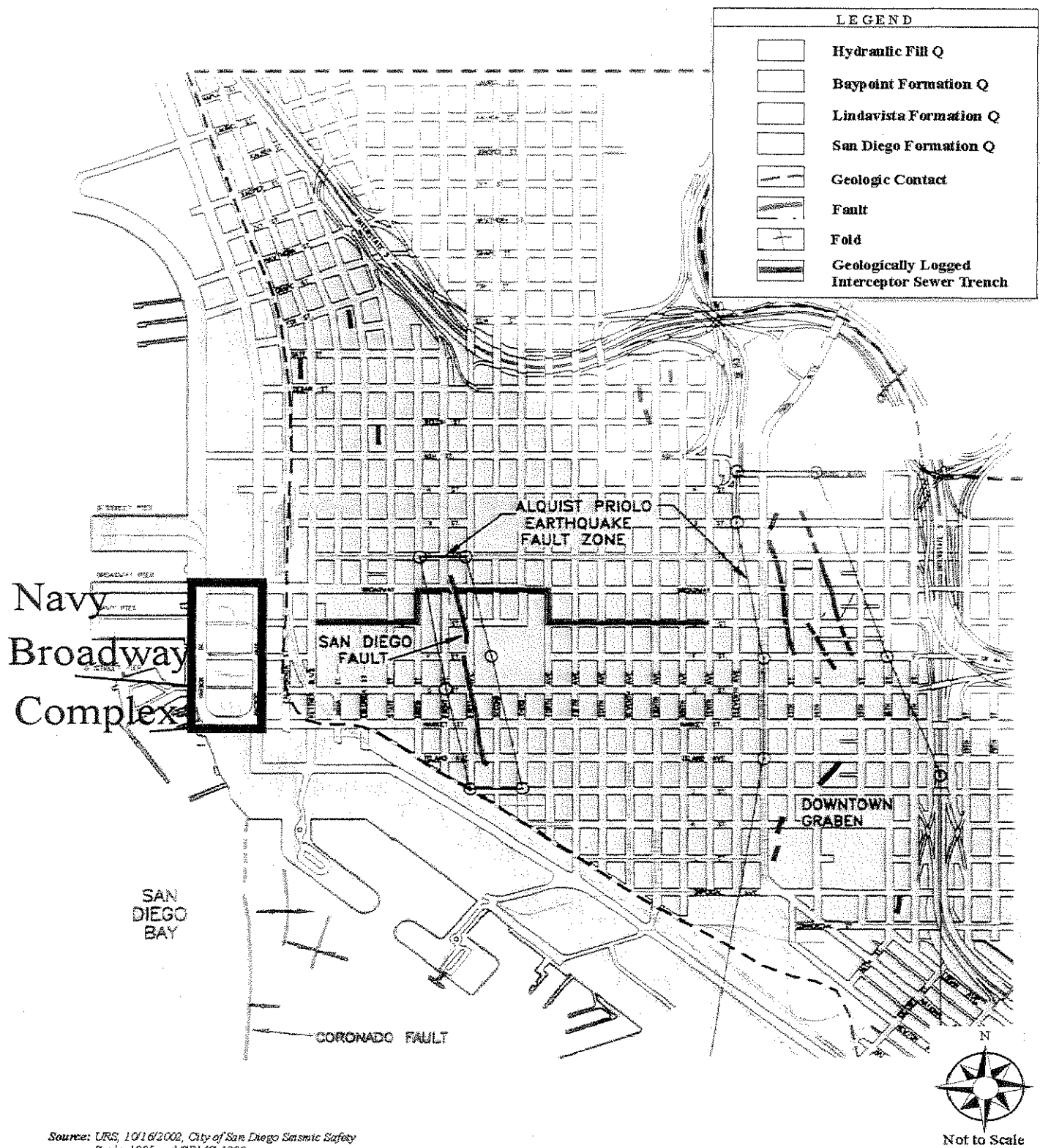


Figure 2 – Alquist-Priolo Earthquake Fault Zone, Point Loma Quadrangle, California Geological Survey, Revised Official Map, Effective May 1, 2003. [http://www.laplayaheritage.com/La%20Playa/point\\_loma%20Quadr%20AP%20Zone.pdf](http://www.laplayaheritage.com/La%20Playa/point_loma%20Quadr%20AP%20Zone.pdf)



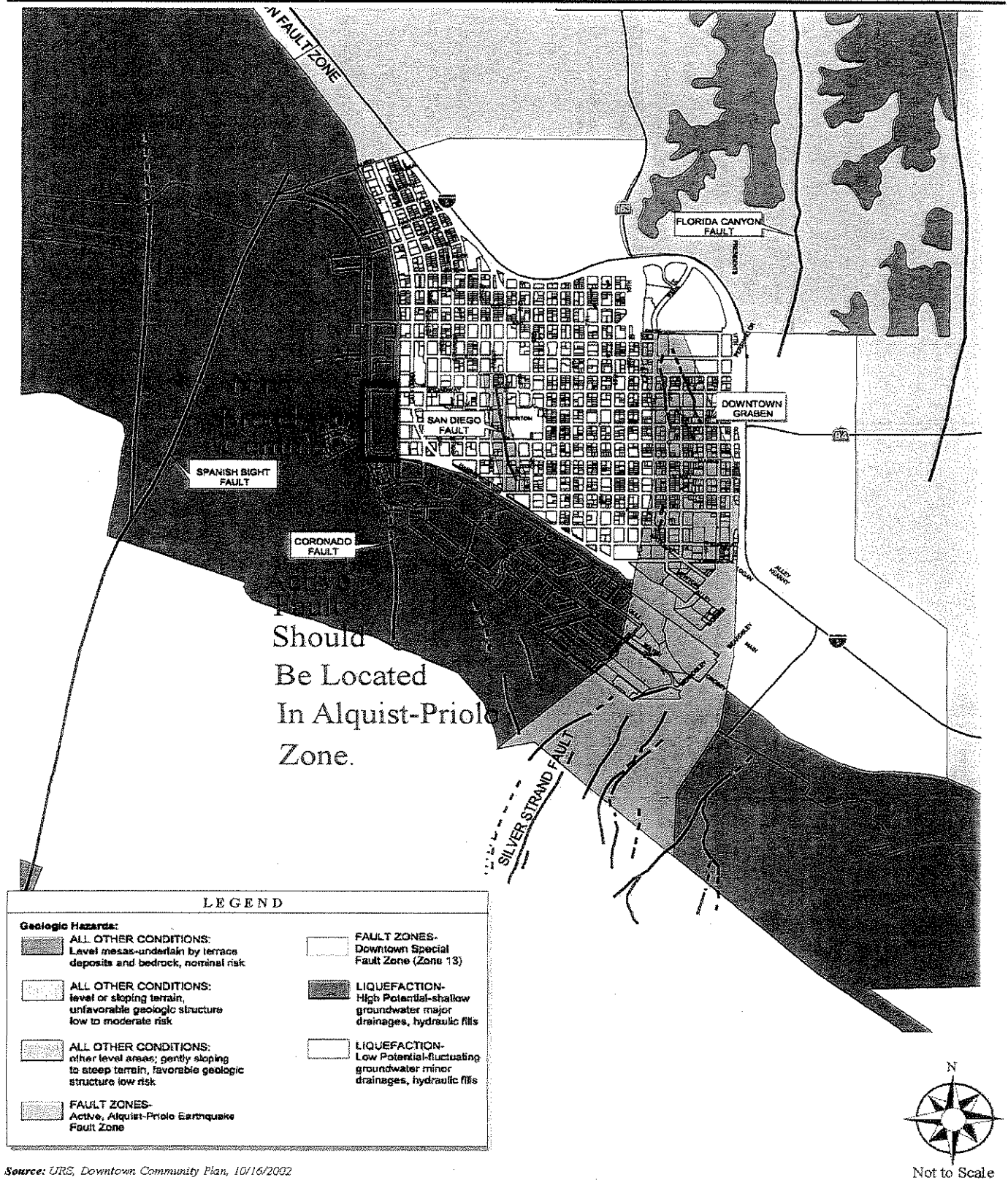


**Figure 3 – Map showing the location of faults, folds, core holes, geophysical tracklines and pier pilings, Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge. California Geology: 55:4-17, dated 2001.** The active Coronado Fault has been extended in the Bay to the edge of the Port Land [http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California Geology 7801 CG San Diego Bay.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California%20Geology%207801%20CG%20San%20Diego%20Bay.pdf).



Source: URS, 10/16/2002, City of San Diego Seismic Safety Study 1995 and CDMG 1996

**Figure 4 - Geologic Formations and Faults, Figure 5.5-1 from the Draft EIR for the Downtown Community Plan, March 2006.** Please note that the Coronado Fault of the Rose Canyon Fault Zone is considered active. This map needs to be changed to show portions of the Coronado Fault as being active and in the Alquist-Priolo earthquake fault zone.



Source: URS, Downtown Community Plan, 10/16/2002

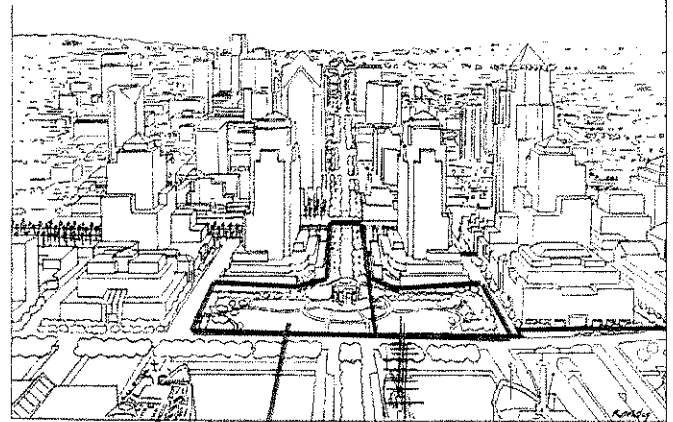
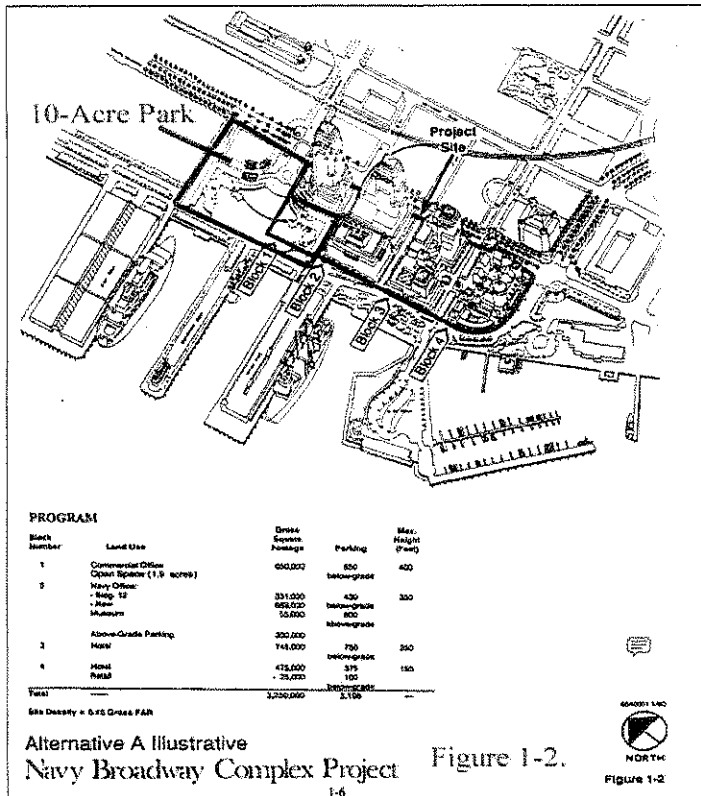
**Figure 5 - Geologic Hazards Figure 5.5-2 from the Draft EIR for the Downtown Community Plan, March 2006.** Please note that the Coronado Fault is considered active. This map needs to be changed to show portions of the Coronado fault of the Rose Canyon Fault Zone as being active and in the Alquist-Priolo earthquake fault zone.



Based on previous fault investigation in the west part of downtown San Diego by WWC and others, it appears unlikely that a significant fault like the Mission Bay fault extends under or near the site... The epicenter of the 1862 quake is not known. It is suggested the event could have been in or near San Diego Bay. Toppozada and others estimated the magnitude of the 1862 earthquake at M 5.9... A 1985 series of earthquakes (largest event M 4.7) was centered generally within about 0.6 miles (1.0 km) south of the San Diego - Coronado Bay Bridge. A similar series of small earthquakes in 1964 was also generally located beneath southern San Diego Bay... In the vicinity of San Diego Bay and the project site, the Rose Canyon fault zone has been mapped as being comprised of several fault strands which include: the Old town fault, Spanish Bight fault, Coronado fault, and Silver Strand fault... The faults suspected to extend into the downtown area are typically mapped as "inferred" or "concealed" hence their specific location is not known. Because of the uncertainty in regard to fault locations, the project site is considered to be located about 0.5 to 1.0 miles from significant strands of the Rose Canyon fault zone... The Coronado fault is mapped as extending northerly across the Bay where it appears to project on land about 0.5 miles to the east of the project area (see Figure 6). Although the fault is suspected to extend beyond the Bay on land (Treiman, 1984) its location in the downtown area (east of the site) is not known... Although portions of the Rose Canyon fault zone are being evaluated by the State Geologist and are to be included in an Alquist-Priolo Special Studies Zone, the west downtown San Diego area (and the project site) is not currently being considered for zonation. The City of San Diego Municipal Code includes a geologic hazards ordinance which requires geologic hazards investigations for new buildings over two stories in height in all of downtown San Diego... A single fault in the vicinity of Front and First Streets about 0.5 miles east of the site. This fault is not considered active... The faults shown on Figure 6 that are located in San Diego Bay were mapped by marine geophysical surveys that included traverses located generally parallel to the bay margins. These marine geophysical surveys conducted to date have not identified significant faults in the bay that appear to project through the Broadway Complex... Previous geologic investigations by WWC and others at these nearby sites immediately east of the Broadway Complex did not encounter significant faults. Therefore, it is believed that previously unrecognized, major active faults do not appear to extend through the west downtown area... Based on previous geologic investigation conducted in San Diego Bay and land areas near the Broadway Complex, it appears unlikely that the site is traversed by a fault that would present a significant fault rupture hazard. Although it is our opinion that it is unlikely the site is traversed by a significant fault, the possibility of on-site faulting cannot be precluded based on the available geologic information... Without being able to directly observe Pleistocene (Bay Point Formation) materials in below ground excavations, it is unlikely that a fault will be discovered on the site during construction. If a fault were observed in construction excavations or discovered during future investigations, it will be necessary to evaluate its recency of past displacements and surface rupture potential. If evaluation of the fault indicates a significant likelihood for renewed movement within the expected project lifetime, and in particular, if the fault was considered "active"<sup>3</sup> it would be inconsistent with current engineering and geologic practice to site structures directly across the fault. Therefore, development options would likely include relocating structures so that they are not sited across the fault... An earthquake of M7 on the Rose Canyon fault occurring at an approximate distance on the order of 0.5 to 1.0 miles from the study area can be considered the maximum earthquake for this site... Although the draft EIS summarizes the results of the geotechnical study, no site-specific methods are given for mitigating the geologic and seismic hazards at the project site... The precise location of the Rose Canyon Fault and its associated branches is not known. Thus, it is unknown if there is any faulting within the boundaries of the project site. If the fault does bisect the project or alternative site, seismic activity could cause surface rupture and substantial damage to structures, which would be a significant impact to all of the alternatives.

**Figure 6 - Excerpts concerning Geology and Seismicity from the 1990 EIR/EIS.**

[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_Summary\\_of\\_Geology\\_&\\_Seismicity.doc](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_Summary_of_Geology_&_Seismicity.doc) . Please note that the report is outdated and incorrect based on the subsequent studies by the State of California (CGS). Information concerning Geology and Seismicity in the 1990 EIR/EIS should not be relied upon for decision making purposes.



Perspective Sketches  
Broadway Terminus,  
Alternative A  
Navy Broadway Complex Project

Figure 1-4.

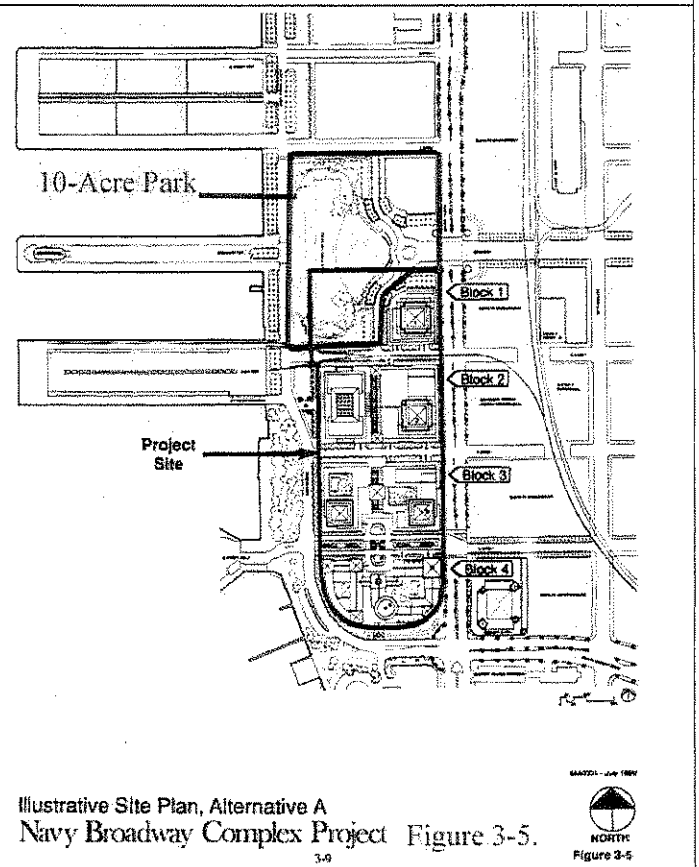
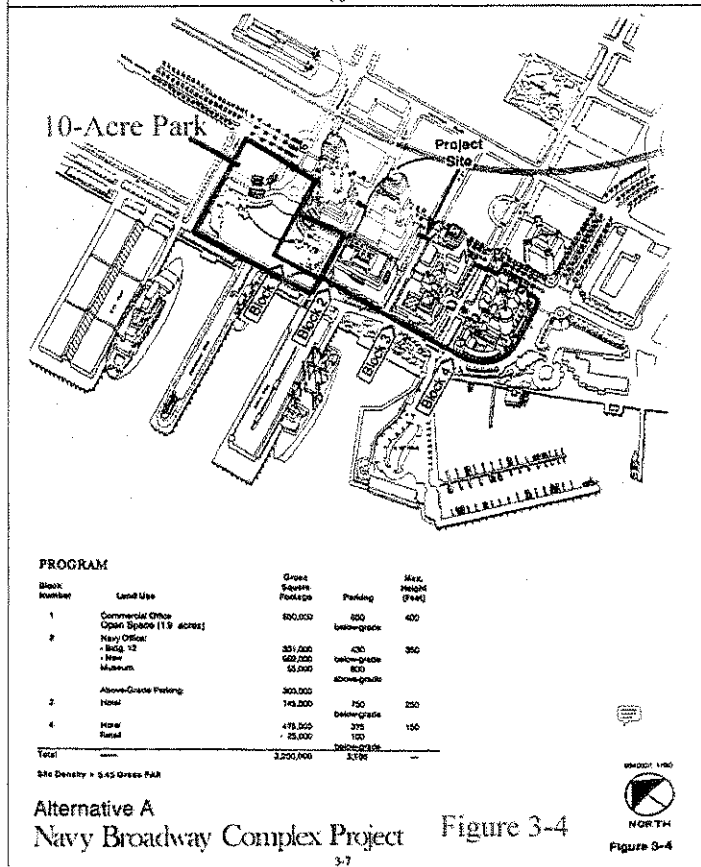
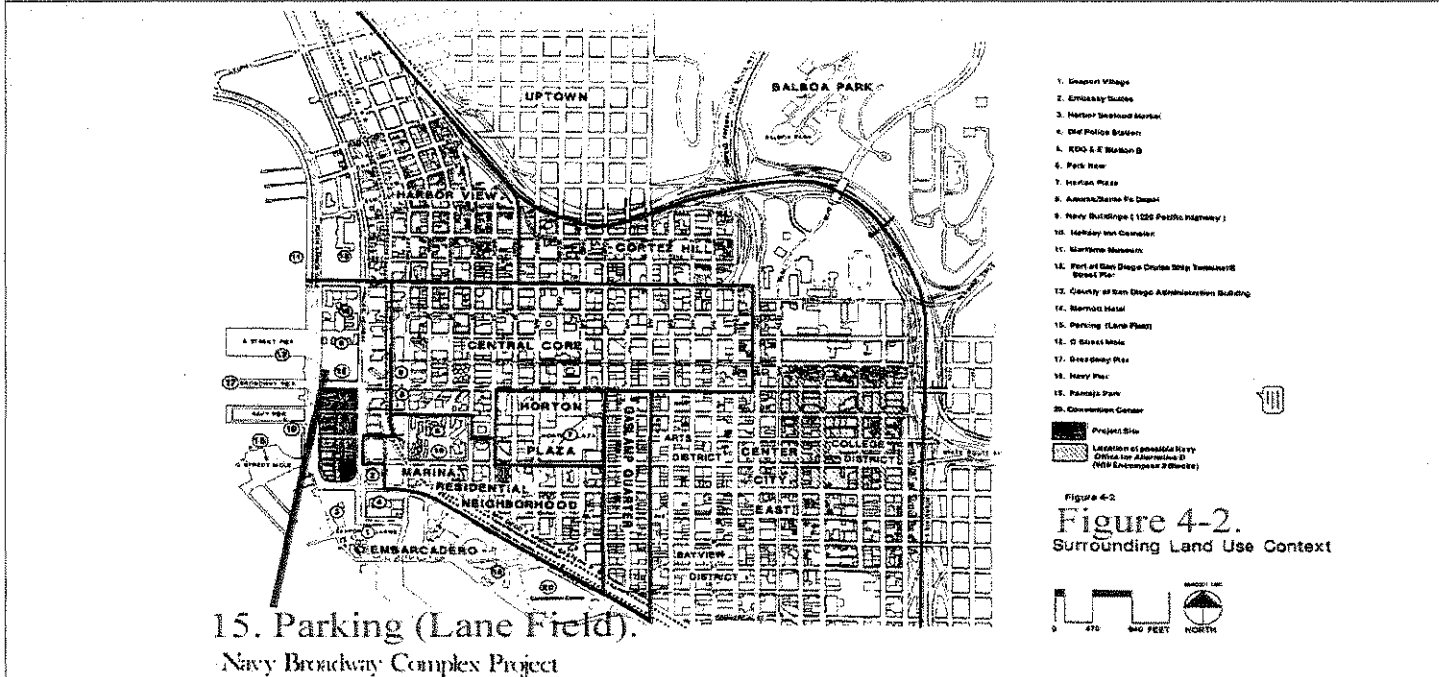
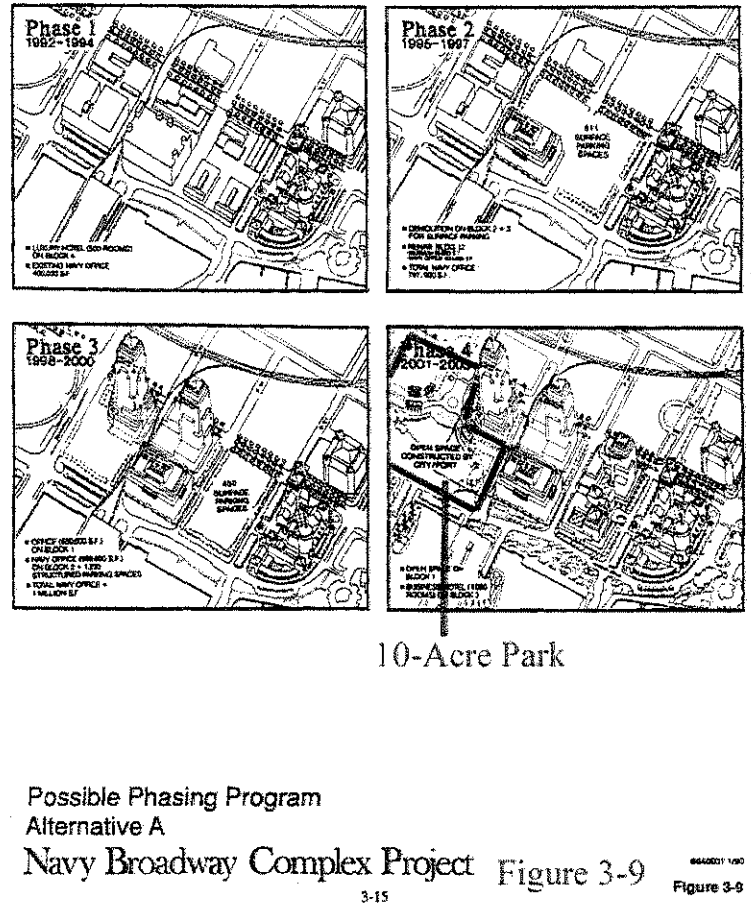
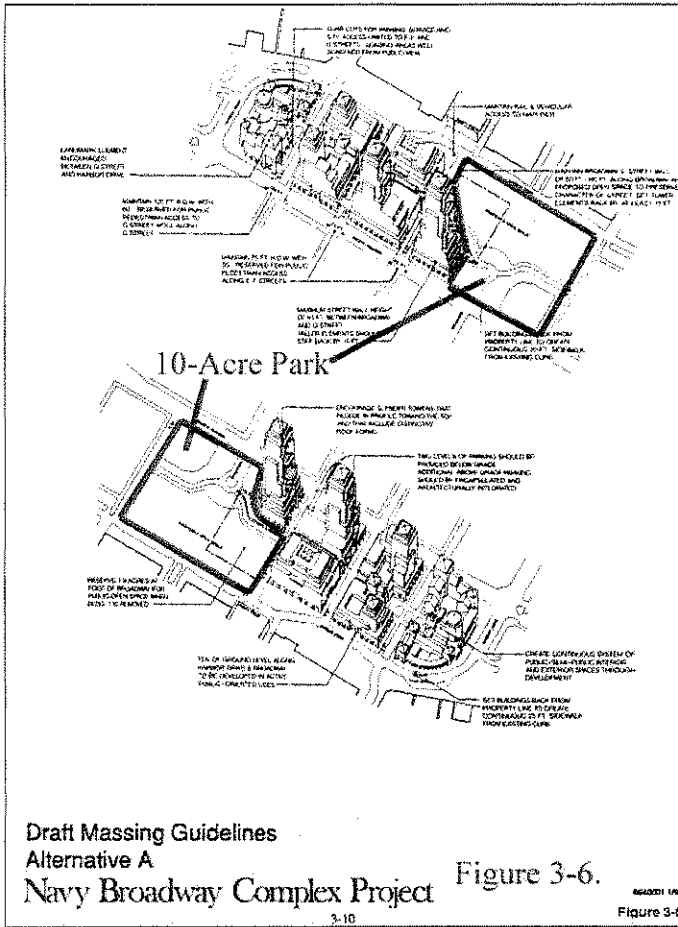


Figure 7 a through 7d – Illustrations for Alternative A (EIR/EIS Figures 1-2, 1-4, 3-4, and 3-5).  
All Figures show the proposed 10-Acre Park at the Foot of Broadway.



**Figure 8a – Illustration for Alternative A (EIR/EIS Figure 3-6) showing the 10-Acre Park at the Foot of Broadway. Figure 8b - Proposed Phasing Program (Figure 3-9), and Figure 8c - Surrounding Land Use Context (Figure 4-2) showing available parking for the Navy Broadway Complex at Lane Field.**

**Developer Proposal  
Summary Tables -- Intensity of Uses and Project Parking  
6/30/06**

Intensity of Uses					
Parcel	Office	Hotel	Retail	Public Attractions	Total
1B	303,763 sf	412,099 sf	0 sf	0 sf	715,862 sf
2A	227,151 sf	0 sf	0 sf	22,080 sf	249,231 sf
2B	594,172 sf	337,563 sf	0 sf	0 sf	931,735 sf
3A	0 sf	241,325 sf	4,944 sf	0 sf	246,269 sf
3B	351,000 sf	229,013 sf	0 sf	0 sf	351,000 sf
4A	0 sf	0 sf	20,056 sf	0 sf	249,069 sf
4B	173,914 sf	0 sf	0 sf	18,970 sf	192,884 sf
Total Provided	1,650,000	1,222,000	25,000	41,050	2,936,050 sf
Total Allowed	1,650,000	1,220,000	25,000	55,000	3,250,000 sf
Difference	0	0	0	(-13,950 sf)	(-313,950)

Parking

Parking


Parcel	Office		Hotel		Retail		Public Attractions		Total	
	Provided	Allowed	Provided	Allowed	Provided	Allowed	Provided	Allowed	Provided	Allowed
1B	304	304	446	446	0	0	0	0	748	748
2A	227	227	0	0	0	0	0	0	227	227
2B	594	594	345	345	0	0	0	0	939	939
3A	0	0	186	186	20	20	0	0	206	206
3B	459	459	0	0	0	0	0	0	459	459
4A	0	0	128	128	80	80	0	0	208	208
4B	174	174	0	0	0	0	0	0	174	174
Total	1,758	1758	1105	1105	100	100	0	0	2,961	2961

**Figure 9 – Developer (Manchester) Proposal for Intensity of Uses and Parking Spaces dated June 30, 2006.**

## References

1. *Memorandum, CEQA Consistency Analysis for Navy Broadway Complex*, prepared by Robert Manis, Assistant Deputy Director, Development Services Department (DSD) to James T. Waring, Deputy Chief of Land Use and Economic Development, October 19, 2006.  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_CEQA\\_Consistency\\_Analysis\\_DSD\\_20061019.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_CEQA_Consistency_Analysis_DSD_20061019.pdf)
2. *Memorandum, Navy Broadway/Pacific Gateway Environmental Consistency Analysis*, prepared by Council President Scott Peters to the Mayor and City Attorney of San Diego, October 20, 2006.  
<http://www.patflannery.com/SanDiegoToday/CCDC/PetersCEQA.pdf>
3. *Final Environmental Impact Report (EIR), Navy Broadway Complex, San Diego, California*, prepared by the City of San Diego, October 1990, 12 pages.  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_City\\_of\\_San\\_Diego\\_Final\\_EIR.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_City_of_San_Diego_Final_EIR.pdf)
4. *Final Environmental Impact Statement (EIS), Navy Broadway Complex, San Diego, California*, prepared by the Western Division, Naval Facilities Engineering Command, Detachment Broadway Complex, Solicitation N6247306-RP-06-X01, October 1990.  
Appendix 7, Volume I  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_Appendix7EnvironmentalImpactStatementVolumeI.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_Appendix7EnvironmentalImpactStatementVolumeI.pdf)  
Appendix 8A, Volume II  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_Appendix8aEnvironmentalImpactStatementVolumeII.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_Appendix8aEnvironmentalImpactStatementVolumeII.pdf)  
Appendix 8B, Volume II  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_Appendix8bEnvironmentalImpactStatementVolumeII.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_Appendix8bEnvironmentalImpactStatementVolumeII.pdf)  
Appendix 8C, Volume II  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_Appendix8cEnvironmentalImpactStatementVolumeII.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_Appendix8cEnvironmentalImpactStatementVolumeII.pdf)  
Appendix 8D, Volume II  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_EIR\\_Appendix8dEnvironmentalImpactStatementVolumeII.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_EIR_Appendix8dEnvironmentalImpactStatementVolumeII.pdf)
5. *Agreement Between the City of San Diego and the United States of America Adopting a Development Plan and Urban Design Guidelines for the Redevelopment of the Navy Broadway Complex*, County of San Diego Recorder's Office Document # 1992-0802775, City Clerk Document No. 00-17858, filed November 2, 1992.  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_1992\\_Development\\_Agreement.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_1992_Development_Agreement.pdf)
6. *State of California Codes, Public Resources Code, Division 13 – Environmental Quality, Section 21166* <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prc&group=21001-22000&file=21165-21177>

7. Web site for the Navy Broadway Complex  
[http://www.laplayaheritage.com/Navy\\_Broadway\\_Complex.htm](http://www.laplayaheritage.com/Navy_Broadway_Complex.htm)
8. *Open File Report 93-02 (OFR 93-02). The Rose Canyon Fault Zone, San Diego County and adjacent offshore area, Southern California*, California Geological Survey, 1993.
9. *Open File Report 97-10b (OFR 97-10b). Age of Faulting in San Diego Bay in the Vicinity of the Coronado Bridge, An Addendum to Analysis of Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge*, California Geological Survey, 1997.
10. *Late Quaternary Faulting in San Diego Bay and Hazard to the Coronado Bridge. California Geology*: 55:4-17, Michael P. Kennedy and Samuel H. Clarke, Jr., California Geological Survey, July/August 2001.  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California\\_Geology\\_7801\\_CG\\_San\\_Diego\\_Bay.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/California_Geology_7801_CG_San_Diego_Bay.pdf)
11. *Point Loma Quadrangle, State of California Earthquake Fault Zones, Alquist-Priolo Earthquake Fault Zoning Act, California Geological Survey, Revised Official Map, Effective May 1, 2003*, California Geological Survey.  
[http://www.laplayaheritage.com/La%20Playa/point\\_loma%20Quad%20AP%20Zone.pdf](http://www.laplayaheritage.com/La%20Playa/point_loma%20Quad%20AP%20Zone.pdf)
12. *Seismic Safety Study (SSS), City of San Diego*, 1995. The Downtown Special Fault Hazard zone requires site specific fault investigations for proposed development projects.
13. *Seismic Safety Study, City of San Diego*, 1982, prepared by Leighton and Associates.
14. *Chapter 5.5, Geology and Seismicity, Draft Downtown Community Plan Final Environmental Impact Report*, prepared by CCDC, dated March 2006  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown\\_FEI\\_R\\_Seismic\\_Geology\\_Impacts.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/Downtown_FEI_R_Seismic_Geology_Impacts.pdf).
15. *Status of the Unreinforced Masonry Building Law, 2003 Report to the Legislature*, prepared by the Seismic Safety Commission, SSC 2003-03 [http://www.seismic.ca.gov/pub/CSSC\\_2003-03\\_URM%20Report\\_June\\_26\\_2003.doc](http://www.seismic.ca.gov/pub/CSSC_2003-03_URM%20Report_June_26_2003.doc)
16. *Regarding: CD-47-90, Navy Broadway Complex, prepared by the California Coastal Commission*, dated October 25, 2006  
[http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC\\_CCC.pdf](http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/NBC_CCC.pdf)  
The State of California agency concluded that a Coastal Development Permit from the CCC is required.
17. *Portion of the Geologic Map of the San Diego 30' x 60' Quadrangle, California*, prepared by the United States Geologic Survey (USGS), 2005.  
[http://www.laplayaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego\\_map2\\_ai9.pdf](http://www.laplayaheritage.com/Documents/CALIFORNIA%20-%20UNITED%20STATES/sandiego_map2_ai9.pdf)

 THE CITY OF SAN DIEGO	DEVELOPMENT PERMIT AND GRADING PERMIT <h2 style="text-align: center;">Geotechnical Study Requirements</h2> <p style="text-align: center;">CITY OF SAN DIEGO DEVELOPMENT SERVICES          1222 FIRST AVENUE, MS 301, SAN DIEGO, CA 92101          CALL (619) 446-5300 FOR APPOINTMENTS AND (619) 446-5000 FOR INFORMATION</p>	INFORMATION BULLETIN <h1 style="text-align: center;">515</h1> OCTOBER 2006
--	--	--

This information bulletin describes the minimum submittal requirements for geotechnical and geological reports that may be required for development permits, subdivision approvals or grading permits. Geotechnical report requirements for building permits are contained in Land Development Code Section 145.0203, Table 145-02A.

Geologic conditions exist within the City of San Diego that can pose serious problems when land is developed. Unstable slopes, slide-prone geologic formations, faults and liquefaction-prone soils occur in many parts of the City. The relative risk of these potential conditions has been mapped as part City of San Diego Seismic Safety Study (SSS). The maps indicate where potentially adverse geological conditions may exist. The conditions will require some level of evaluation by a State licensed geologist or civil engineer, or both. Correction of these conditions may often create unintended environmental impacts which must be addressed during the development permit phase of the project. The Geologic Hazard Category is identified on the SSS maps and is provided on the Parcel Information Checklist (DS-302).

### I. REQUIRED GEOTECHNICAL STUDY

Table 515A describes which type of geotechnical study is required based upon the geologic hazard category as identified on the San Diego Seismic Safety Study (SSS) and the Land Use Group (see Table 515B). The study identified in Table 515A is required at project submittal unless a written request for exception is provided. Such request must identify the criteria under which the exception is justified per the "Exceptions to Study Requirements" listed below.

### II. EXCEPTIONS TO STUDY REQUIREMENTS

Geotechnical reports are not required for development permits for the following conditions. Exceptions are not allowed for Tentative Maps, Subdivision Approvals or Grading Permits.

- A. In zones 53 or 54 - where the topography is flat (slope angle less than 4:1 or 14 degrees), where no Environmentally Sensitive Lands (as defined by Land Development Code Section 143.0101) will be impacted, or where no habitable space is proposed.

### Documents referenced in this Information Bulletin

- Environmental Sensitive Lands Regulations (SDMC, Section 143.0101)
- Foundation and Retaining Walls (SDMC, Section 145.0203)
- Information Bulletin 513, Preliminary Review
- Parcel Information Checklist (DS-302)
- Technical Guidelines for Geotechnical Reports

- B. In zones 31 or 32, considered at risk for liquefaction, the study can be deferred to the construction permit phase if no Environmentally Sensitive Lands are likely to be impacted, or where no habitable space is proposed.
- C. In zones 12 or 13 - Studies may be deferred to construction permit phase where no habitable space is proposed.
- D. In zones 32, 48 and 51-55 - Residential additions up to 500 square feet may not require a geotechnical study at the time of submittal. The determination for a geotechnical study will be made during the first review. To determine if a report will be required prior to project submittal, you may request a preliminary review, see Information Bulletin 513, Preliminary Review, for information on the preliminary review process.

### III. REPORTS

There are three types of geotechnical reports that may be required at submittal for development permits, subdivision approvals, or grading permits. A brief description of each is as follows (for complete descriptions and minimum standards refer to the City's "Technical Guidelines for Geotechnical Reports" available at the Records Section of the Development Services Center):

- A. **Preliminary Soils Report (SR).** This report is the result of an initial geotechnical investigation conducted to evaluate existing site conditions in order to obtain general soil and stability information. This basic report is required for all projects involving grading, and when development is located within geologic

hazard zones considered risky for the type of development proposed.

## B. Geologic Reports.

### 1. Geologic Reconnaissance Report (GR)

A preliminary study called a GR is required for minor projects or when the level of risk is considered low due to the suspected geologic hazard mapped at the site. This report generally includes a visit to the site and a review of available records, maps, and photographs that might provide information about the geotechnical conditions at the site.

### 2. Geotechnical Investigation Report (GI).

When there is a higher risk, such as when a fault or landslide is suspected nearby or when the reconnaissance finds evidence of a significant hazard on the site,

a GI may be required. The investigation would include field work, such as trench excavations and/or borings, geologic mapping, soil samples, laboratory analysis, and a thorough evaluation of all encountered geotechnical hazards.

Refer to Table 515A and 515B to determine which type of report is required for your project.

NOTE: These are minimum submittal requirements. The geotechnical study and subsequent review may discover or identify adverse geologic or geotechnical conditions which cannot be addressed without more extensive investigation as determined by the consultant. In that case, additional investigation may be required to evaluate and provide recommendations to correct the condition prior to approving the project or prior to issuing subsequent construction permits.

Table 515A / Required Geotechnical Study

Hazard Category	Group I	Group II	Group III	Group IV	Group V	Group VI	Group VII
11,13, 21, 31, 41	GI	GI	GI	GI	GI	GI	SR
12, 22-27,42-47	GI	GI	GI	GI	GR	GI	SR
32, 48, 51-55	GR	GI	GR *	GR	--	--	SR

GI = Geotechnical Investigation Report

GR = Geologic Reconnaissance Report

SR = Preliminary Soils Report

\* = Recommended

Table 515B / Project Approval Group

Group I	Tentative and Vesting Tentative Maps, Map Waivers not listed in Group VI
Group II	Grading Permits(including self certification) (also see Group VII)
Group III	Neighborhood or Site Development Permits for Environmentally Sensitive Lands and Coastal Development Permits
Group IV	Planned Development Permits
Group V	Conditional Use Permits
Group VI	Map Waivers and Tentative Maps for Condominium Conversions/Creations (residential or commercial)
Group VII	Grading Permits for underground storage tank removal and/or soil remediation





City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-5000

## Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit  
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☐ Conditional Use Permit  
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☒ Other CEQA Determination

Project Title

Manchester Pacific Gateway / Navy Broadway Complex

Project Address:

W. Broadway, Pacific Gateway, N. Harbor Drive  
San Diego, California 92101

Project No. For City Use Only

### Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☐ No

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

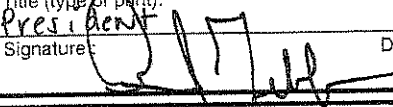
Project Title: <u>Manchester Pacific Gateway/Navy Broadway Complex</u>	Project No. (For City Use Only)
--	---------------------------------

**Part II - To be completed when property is held by a corporation or partnership**

**Legal Status (please check):**

☒ Corporation  
 ☒ Limited Liability -or-  
 ☐ General  
 What State? DE  
 Corporate Identification No. 20-4912085  
☐ Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. **Note:** The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. **Additional pages attached** ☐ Yes ☐ No

Corporate/Partnership Name (type or print): <u>Manchester Pacific Gateway LLC</u> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant/Lessee Street Address: <u>One Market Place, 33rd Floor</u> City/State/Zip: <u>San Diego, California, 92101</u> Phone No: <u>619.231.3800</u> Fax No: <u>619.696.7100</u> Name of Corporate Officer/Partner (type or print): <u>Richard V. Gibbons</u> Title (type or print): <u>President</u> Signature:  Date: _____	Corporate/Partnership Name (type or print):  <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address:  City/State/Zip:  Phone No:   Fax No:  Name of Corporate Officer/Partner (type or print):  Title (type or print):  Signature :   Date:
Corporate/Partnership Name (type or print):  <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address:  City/State/Zip:  Phone No:   Fax No:  Name of Corporate Officer/Partner (type or print):  Title (type or print):  Signature :   Date:	Corporate/Partnership Name (type or print):  <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address:  City/State/Zip:  Phone No:   Fax No:  Name of Corporate Officer/Partner (type or print):  Title (type or print):  Signature :   Date:
Corporate/Partnership Name (type or print):  <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address:  City/State/Zip:  Phone No:   Fax No:  Name of Corporate Officer/Partner (type or print):  Title (type or print):  Signature :   Date:	Corporate/Partnership Name (type or print):  <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address:  City/State/Zip:  Phone No:   Fax No:  Name of Corporate Officer/Partner (type or print):  Title (type or print):  Signature :   Date: